(23,150)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1913.

## No. 228.

RICHARD G. RILEY, PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 17, 1913.

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1 UNITED STATES OF AMERICA, *ss:*

[Seal The Superior Court.]

The President of the United States to the Honorable the Judges of the Superior Court of the Commonwealth of Massachusetts, holden at Taunton, within and for the County of Bristol, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Superior Court before you, or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Commonwealth of Massachusetts Plaintiff and Richard G. Riley Defendant, in a complaint charging a crime wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Richard G. Riley as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the eighteenth day of March in the year of our Lord one thousand nine hundred and twelve.

CHARLES K. DARLING,
*Clerk of the Circuit Court of the United States, District of Massachusetts.*

Allowed by
JOHN A. AIKEN,
*Chief Justice of the Superior Court.*

2 COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

And now here, the Judges of the Superior Court of the County of Bristol make return of this writ by annexing hereto and sending

herewith, under the seal of the said Superior Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In Testimony Whereof, I Simeon Borden Clerk of said Superior Court within and for the County of Bristol have hereto set my hand and the seal of said Court this twenty-first day of March A. D. 1912.

[Seal The Superior Court.]

SIMEON BORDEN, *Clerk.*

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court in the City of Washington, in the District of Columbia, within thirty days from the date hereof next, pursuant to a writ of error filed in the Clerk's Office of the Superior Court of the County of Bristol and Commonwealth of Massachusetts, wherein Richard G. Riley of Fall River, in said County of Bristol, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John A. Aiken, Chief Justice of the Superior Court of Massachusetts, this eighteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

JOHN A. AIKEN,
*Chief Justice of the Superior Court.*

Service of the above citation is hereby accepted for the Commonwealth of Massachusetts.

JAMES M. SWIFT,
*Attorney General.*

4 [Endorsed:] United States of America. President of U. S. to Commonwealth of Massachusetts. Richard G. Riley, Plaintiff in Error, vs. Commonwealth. Citation.

5 COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

At the Superior Court Holden within and for the County of Bristol for the Transaction of Criminal Business.

2673—Commonwealth vs. Richard G. Riley of Fall River in the County of Bristol, Appellant from a Judgment of the Second District Court of Bristol, holden at Fall River in said County, by the Justice of said Court, on the ninth day of March A. D. 1910, upon

a complaint of Mary E. Halley of Fall River in said County, who therein complains and upon oath says:

That Richard G. Riley of Fall River, in the County of Bristol, at Fall River aforesaid, in the County aforesaid, on the 24th day of February in the year of our Lord nineteen hundred and ten, being then and there the superintendent of the Davol Mills, a corporation duly established according to law and carrying on in said Fall River a manufacturing establishment, to wit: a mill for the manufacture of cotton goods, in which establishment women were then and there employed in laboring and in which manufacturing establishment the said corporation had caused to be posted before the said 24th day of February, and on said 24th day of February still had and continued to have posted in a conspicuous place in said establishment in a certain room therein in which said room were employed certain women to wit: Annie Manning and Nora Callahan, printed notice that said women were required to work in laboring during the hours set forth in said notice, which said notice was of the following tenor, to wit:

*Time Table of the Hours of Labor Required of Minors and Women Employed in this Room.*

| | Hours. | Commence work at | Stop work at | Time allowed for dinner. Hour begins. | Hour ends. |
|---|---|---|---|---|---|
| Monday ..... | 10.10 | 6.50 | 6.00 | 12 | 1 |
| Tuesday ..... | " | " | " | " | " |
| Wednesday .... | " | " | " | " | " |
| Thursday ..... | " | " | " | " | " |
| Friday ..... | " | " | " | " | " |
| Saturday ..... | 5.10 | " | 12 | | |

6 did then and there employ in laboring in said mill and in the room in which said notice was posted the said women Annie Manning and Nora Callahan at a time other than stated in said printed notice, to wit, at five minutes of one o'clock 12.55 M. on said 24th day of February, the said employment of the said Annie Manning and Nora Callahan at the time aforesaid not being then and there or any part thereof in compensation for or to make up for any time lost in consequence of the stopping of any machinery of said corporation upon which said Annie Manning and Nora Callahan was employed or dependent for employment.

MARY E. HALLEY.

BRISTOL, *ss:*

Received and sworn to this first day of March in the year of our Lord one thousand nine hundred and ten.

Before me,

A. B. LEONARD,
*Clerk of the Second District Court of Bristol and Justice of the Peace.*

At the trial in the District Court the defendant was found guilty.

This appeal was entered in this Court on the first Monday of April A. D. 1910.

On the twenty-first day of June A. D. 1910 the following motion to quash was filed:—

And now comes the defendant and moves that said complaint be quashed and dismissed and said defendant discharged, for that the same does not set out any offence under the laws of this Commonwealth in that:

1. It alleges that the defendant personally employed women at a time other than that stated in a notice posted by another.

2. The provision of the statute under which the offence is alleged to have been committed by the defendant's violation thereof is unconstitutional and void.

3. It charges two offences in one count.

By His Attorneys, JENNINGS, MORTON & BRAYTON.

7 Which said motion was overruled on the same day and the defendant appeals and excepts.

On said twenty-first day of June A. D. 1910 the District Attorney comes and says he will no further prosecute so much of the complaint as alleges a violation of law with reference to Annie Manning.

At the June Sitting A. D. 1910 holden at New Bedford within and for the County of Bristol upon the said complaint and the plea of not guilty made to said complaint in the Court below, the cause after a full hearing is submitted to a jury duly empanelled and sworn to try the same to wit Thomas A. Manchester, Foreman, and his fellows, James F. Cochran, Stephen A. Hathaway, John F. Kirk, John H. McLean, Frank W. Miller, John Moran, Russell Reed, Francis P. Reilly, John Wallace, Charles D. Williams and Eli Wordell, who on the twenty-second day of June A. D. 1910 return their verdict therein and say that thereof the said Richard G. Riley is guilty.

On said twenty-second day of June A. D. 1910 the District Attorney comes and moves for sentence.

It is therefore ordered by the Court on this twenty-second day of June A. D. 1910 that the said Richard G. Riley be sentenced to pay a fine of Fifty Dollars ($50.00) and stand committed until said fine is paid.

And now certain questions of law having arisen at the trial the Justice imposing the sentence in this case on said twenty-second day of June A. D. 1910 certifies that in his opinion there is reasonable doubt whether the judgment should stand.

It is therefore ordered that execution of said sentence be stayed until the further order of the Court, and that the defendant recognize personally in the sum of one hundred dollars ($100.00).

The defendant accordingly duly recognized and the case was thence continued and on the fourth day of January A. D. 1912 the Clerk is directed by rescript from the Supreme Judicial Court to make the following entry upon the docket of the Superior Court, "Exceptions Overruled."

Attest:

SIMEON BORDEN, *Clerk.*

8 *Copy of Complaint.*

COMMONWEALTH OF MASSACHUSETTS:

To Augustus B. Leonard, Esq., Clerk of the Second District Court of Bristol, in the County of Bristol, and Justice of the Peace within and for the County of Bristol:

Mary E. Halley at Fall River, in said county, in behalf of said Commonwealth, on oath complains that Richard G. Riley of Fall River, in the County of Bristol, at Fall River, aforesaid, in the County aforesaid, on the 24 day of February in the year of our Lord nineteen hundred and ten, being then and there the superintendent of the Davol Mills a corporation duly established according to law and carrying on in said Fall River a manufacturing establishment to wit a mill for the manufacture of cotton goods in which establishment women were then and there employed in laboring and in which manufacturing establishment the said corporation had caused to be posted before the said 24 day of February and on said 24 day of February still had and continued to have posted in a conspicuous place in said establishment in a certain room therein in which said room were employed certain women to wit Annie Manning and Nora Callahan a printed notice that said women were required to work in laboring during the hours set forth in said notice, which said notice was of the following tenor, to wit:

*Time Table of the Hours of Labor Required of Minors and Women Employed in this Room.*

| | Hours. | Commence work at | Stop work at | Time allowed for dinner. Hour begins. | Hour ends. |
|---|---|---|---|---|---|
| Monday ..... | 10.10 | 6.50 | 6.00 | 12 | 1 |
| Tuesday ..... | " | " | " | " | " |
| Wednesday .... | " | " | " | " | " |
| Thursday ..... | " | " | " | " | " |
| Friday ..... | " | " | " | " | " |
| Saturday ..... | 5.10 | " | 12 | | |

did then and there employ in laboring in said mill and in the room in which said notice was posted the said women Annie Manning and Nora Callahan at a time other than that stated in said printed notice, to wit, at five minutes of one o'clock 12.55 M. on said 24 day of February the said employment of the said Annie Manning and Nora Callahan at the time aforesaid not being then and there or any part thereof in compensation for or to make up for any time lost
9 in consequence of the stopping of any machinery of said corporation upon which said Annie Manning or Nora Callahan was employed or dependent for employment.

MARY E. HALLEY.

BRISTOL, *ss:*

Received and sworn to this first day of March in the year of our Lord one thousand nine hundred and ten.

Before me,

A. B. LEONARD,
*Clerk of the 2nd District Court of Bristol, and Justice of the Peace.*

BRISTOL, *ss:*

[L. S.]

To the sheriff of the County of Bristol, or his Deputy, or any constable or Police Officer of Fall River, or any City or Town in said Commonwealth, or any District Police Officer of the Commonwealth in said County, Greeting:

These are in the name of the Commonwealth of Massachusetts, to command you to take and bring before the Second District Court of Bristol in said County of Bristol, the body of the above named Richard G. Riley if to be found in your precinct, to answer to said Commonwealth on the foregoing complaint this day made on oath to the undersigned, Clerk of said Court, Justice of the Peace, and you are also required to summon Annie Manning, 291 Spring; Nora Callahan, 251 William; Miss Halley to appear and testify to what they know touching the matter of said complaint.

Witness my hand and seal at Fall River, in said County, this first day of March in the year of our Lord one thousand nine hundred and ten.

A. B. LEONARD,
*Clerk of the Second District Court of Bristol, and Justice of the Peace.*

A true copy.
Attest:
A. B. LEONARD, *Clerk.*

A true copy.
Attest:
SIMEON BORDEN, *Clerk.*

10 [Endorsed.]

BRISTOL, *ss:*

CITY OF FALL RIVER, *March* 1, 1910.

By virtue hereof I have notified the within named Richard G. Riley and have him before the Second District Court of Bristol, in Fall River, in said County, for examination; and I have summoned as witnesses in behalf of Government, Annie Manning, Nora Callahan, Mary E. Halley.

JOHN DRISLAN,
*Police Officer, City of Fall River.*

A true copy.
Attest:
A. B. LEONARD, *Clerk.*

[Endorsed:] 2673. No. 2621. 1910. Copy. Complaint and Warrant. Commonwealth vs. Richard G. Riley. Viol. Labor Law. Plea—Not guilty, March 3, 1910. Contin. to M'ch 9. Verdict guilty June 22, 1910. Sentenced to pay a fine of Fifty Dollars ($50.00) & stand committed &c. June 22, 1910. 6/21/10. So much of this complaint as alleges violation with reference to Annie Manning is nol prossed. J. M. Swift, Dist. Att'y. A. B. Leonard, Clerk.

[Endorsed.]

Witness fees ..... 2.40

Total ..... 2.40

I, William F. Dana the Justice imposing sentence in this case do hereby certify that in my opinion there is reasonable doubt whether the judgment should stand.

It is therefore ordered that execution of said sentence be stayed until the further order of the Court and that the defendant recognize personally in the sum of $100.

WM. F. DANA, *J. S. C.*

June 22, 1910.

A. B. LEONARD, *Clerk.*

11 (*Copy of Judgment, Second District Court.*)

COMMONWEALTH OF MASSACHUSETTS,

*Bristol, ss:*

[L. S.]

Second District Court of Bristol, in the County of Bristol, holden by the Justice of said Court, at Fall River, in said County on the 9 day of March A. D. 1910.

Be it remembered, that on the day and year aforesaid Richard G. Riley of Fall River in the County of Bristol, was brought before said Court by virtue of a warrant duly issued upon complaint of Mary E. Halley of said Fall River who therein complains and upon oath says that said Riley at Fall River, aforesaid, in the county aforesaid, on the 24 day of February A. D. 1910, did commit the crime of violation — Labor Law, as is more fully alleged in said complaint.

To which complaint the said Defendant upon being inquired of by the Court, pleads and says that he is not guilty.

Whereupon after a full hearing and examination in said case, it appears to said Court that said Defendant is guilty. It is therefore considered and ordered by said Court that the said Defendant for the said offense pay a fine of fifty (50) dollars to the use of the City of Fall River.

And if said fine shall not be paid as aforesaid, it is further ordered by said Court that the said Defendant be committed to the House of

Correction in New Bedford in said County, there to be kept and governed according to law and the rules of said House of Correction — he shall pay said fine or be otherwise discharged by due course of law.

From which said judgment and sentence said Defendant appeals; wherefore said Defendant is ordered to recognize to said Commonwealth in the sum of three hundred dollars with sufficient sureties conditioned for his appearance before the next sitting of the Superior Court to be holden at New Bedford, within and for said County, on the first Monday of April next and that he stand committed until he so recognize. He Recog.

A. B. LEONARD, *Clerk.*

A true copy—attest.
A. B. LEONARD, *Clerk.*

A true copy.
Attest:
SIMEON BORDEN, *Clerk.*

12 [Endorsed:] 2673. 1910. No. 2621. Commonwealth vs. Richard G. Riley. (Copy.) Judgment. Witnesses: Annie Manning, 42, 1.20; Nora Callaghan, 42, 1.20; Total Witness —, 2.40.

13 *Copy of Recognizance.*

(Recognizance on Appeal to the Superior Court.)

COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

On this 9 day of March in the year of our Lord one thousand nine hundred and ten Richard G. Riley and Patrick Kiley all of Fall River personally appeared before the Second District Court of Bristol in said County of Bristol, and acknowledged themselves to be jointly and severally indebted to the Commonwealth of Massachusetts in the sums following, to wit: The said Richard G. Riley as principal, and the said Patrick Kiley as sureties in the sum of three hundred dollars, each, to be levied on their goods or chattels, land or tenements, and in want thereof upon their bodies, to the use of said Commonwealth, if default be made in performace of the condition hereunder written.

The condition of the recognizance is such that whereas, at said District Court holden on the 9 day of March in the year of our Lord one thousand nine hundred and ten said Riley was brought before said Court by virtue of a warrant issued in due form of law, on a complaint charging the said Riley with having committed the crime of violation labor law as is more fully set forth in said complaint.

And whereas, after a full hearing upon said complaint, the said Riley has this day, before said Court been convicted of the offence therein alleged, and for the offence aforesaid has been ordered by said Court to Pay a fine of fifty dollars.

And if said fine shall not be paid as aforesaid, it is further ordered by the said Court that the said defendant be committed to the House of Correction in New Bedford, in said County, there to be kept and governed according to the law and rules in said House of Correction, until he shall pay said fine, or be otherwise discharged by due course of law.

From which sentence he the said Riley appeals to the next sitting of the Superior Court next to be holden at New Bedford, within and for said County of Bristol, on the first Monday of April next, and is ordered by said Court to recognize with sufficient sureties in the sum of three hundred dollars, for his appearance before said
14 Superior Court then and there to prosecute said appeal, and to abide the sentence of the Court thereon.

Now therefore, if the said Riley shall appear before the said Superior Court next to be holden at New Bedford, within and for the County of Bristol on the first Monday of April next, and also in like manner at any subsequent term of said court, to which the proceedings in the premises may be continued, if not previously surrendered and discharged, and so from term to term until the final decree, sentence or order of said Court thereon, and shall abide such final sentence, order or decree of said Court, and not depart without leave, and shall in the meantime keep the peace and be of good behavior; then this Recognizance to be void—otherwise to be and abide in full force, power and virtue.

Attest,

A. B. LEONARD, *Clerk.*

15 [Endorsed:] 2673. (Copy.) (Appeal.) 1910. No. 2621. Commonwealth vs. Richard G. Riley. Recognizance.

COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

And on the same day Annie Manning and Nora Callahan all of Fall River, witnesses in said cause personally appeared before the said District Court, and Acknowledged themselves to be severally indebted to the Commonwealth in the sum of one hundred dollars, to be levied on their goods and chattels, land and tenements and in default thereof upon their bodies, to the use of the Commonwealth, if default be made in the performance of the conditions following:

The condition of the Recognizance is such, that if the said witnesses shall appear before the Superior Court next to be holden at New Bedford, within and for the said County of Bristol, on the first Monday of April next, then and there to give evidence on behalf of the said Commonwealth upon the complaint aforesaid against said Riley and shall not depart without license, then the above Recognizance to be void; otherwise to remain in full force power and virtue.

Attest.

A. B. LEONARD, *Clerk.*

A true copy,
Attest:

SIMEON BORDEN, *Clerk.*

18 (*Appeal.*)

COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

Be it remembered, that on this 9 day of March in the year of our Lord one thousand nine hundred and ten Annie Manning and Nora Callahan all of Fall River personally appeared before the Second District Court of Bristol in said County of Bristol and acknowledged themselves to be severally indebted to the Commonwealth of Massachusetts, in the sum of one Hundred Dollars each, to be levied on their goods or chattels, land or tenements, and in want thereof upon their bodies, to the use of the said Commonwealth, if default be made in the performance of the condition hereunder written.

The Condition of This Recognizance is such, That whereas, at said District Court holden on the 9 day of March in the year of our Lord nineteen hundred and ten Richard G. Riley was brought before said Court by virtue of a warrant issued in due form of law, on a complaint charging the said Riley with having committed the crime of Violation Labor Law as is more fully set forth in said complaint.

And whereas after a full hearing upon the said complaint, the said Riley has this day before said Court been convicted of the offence therein alleged, and for the offence aforesaid has been ordered by said Court to pay a fine to the City of Fall River of fifty dollars;

From which sentence, the said Riley appeals to the next sitting of the Superior Court next to be holden at New Bedford, within and for the said County of Bristol, on the first Monday of April next, and is ordered by said Court to recognize in the sum of three hundred dollars for his appearance before said Superior Court, then and there to prosecute said appeal, and to abide the sentence of the court thereon, &c.

And whereas said Manning & Callahan being before said District Court as witnesses for said Commonwealth, in the examination of the complaint aforesaid are severally ordered by said Court to recognize as aforesaid, to appear at said Superior Court, then and there to testify in behalf of said Commonwealth touching the offence charged in the complaint aforesaid.

17 Now therefore the condition of this recognizance is such, that if the said witnesses shall personally appear before the said Superior Court next to be holden at New Bedford, within and for the said County of Bristol, on the first Monday of April next, then and there to give evidence on behalf of the said Commonwealth, upon the complaint aforesaid, against said Riley and shall not depart, without license, then the above Recognizance to be void; otherwise to remain in full force, power and virtue.

Attest,

A. B. LEONARD, *Clerk.*

A true copy,
Attest:

SIMEON BORDEN, *Clerk.*

18 [Endorsed:] 2673. 1910. No. 2621. Commonwealth vs. Richard G. Riley. (Copy.) Recognizances Witnesses.

19 BRISTOL, ss:

Second District Court.

COMMONWEALTH
vs.
RICHARD G. RILEY.

*Motion to Quash and Dismiss.*

And now comes the defendant in the above entitled action before pleading and moves that said complaint be quashed and said action dismissed for that the same does not set out any offence under the laws of this Commonwealth.

RICHARD G. RILEY,
By His Attorneys, JENNINGS, MORTON & BRAYTON.

A true copy.
Attest:

A. B. LEONARD, *Clerk.*

A true copy.
Attest:

SIMEON BORDEN, *Clerk.*

20 [Endorsed:] 2673. No. 2621. Commonwealth vs. Richard G. Riley. (Copy.) Motion to Quash & Dismiss. Received & Filed Mar. 3, 1910. A. B. Leonard, Clerk 2nd Dist. Court of Bristol. Over-ruled M'ch 9, 1910. A. B. Leonard, Clerk.

21 BRISTOL, ss:

Second District Court.

COMMONWEALTH
vs.
RICHARD G. RILEY.

*Defendant's Demurrer.*

And now comes the defendant and demurs to the complaint in said action and assigns as causes for his demurrer the following viz:—

1. That said complaint does not set out *in* any offence under the laws of this Commonwealth.
2. That said complaint does not set out *in* any offence under and by virtue of section 48 of Chap. 514 of the Acts of 1909.
3. The last paragraph of said section 48 beginning with the words, "the employment of such person at any time other than as stated in said printed notice is unconstitutional and void.

RICHARD G. RILEY,
By His Attorneys, JENNINGS, MORTON & BRAYTON.

I, Andrew J. Jennings, Attorney for the said defendant do hereby certify that I am of opinion that there is such probable ground and law in the foregoing demurrer as to make it a fit subject for judicial inquiry and trial, and that it is not intended merely for delay.

ANDREW J. JENNINGS.

A true copy.
Attest:

A. B. LEONARD, *Clerk.*

A true copy.
Attest:

SIMEON BORDEN, *Clerk.*

22 [Endorsed:] 2673. No. 2621. Commonwealth vs. Richard G. Riley. (Copy.) Defendant's Demurrer. Received & Filed March 3, 1910. A. B. Leonard, Clerk 2nd Dist. Court of Bristol. Overruled March 9, 1910. A. B. Leonard, Clerk.

23 BRISTOL, *ss:*

Superior Court.

COMMONWEALTH
vs.
RICHARD G. RILEY.

*Defendant's Motion to Quash.*

And now comes the defendant and moves that said complaint be quashed and dismissed and said defendant discharged, for that the same does not set out any offense under the laws of this Commonwealth in that;

1. It alleges that the defendant personally employed women at a time other than that stated in a notice posted by another.
2. The provision of the Statute under which the offense is alleged to have been committed by the defendant's violation thereof is unconstitutional and void.
3. It charges two offenses in one count.

By His Attorneys, JENNINGS, MORTON & BRAYTON.

A true copy.
Attest:

SIMEON BORDEN, *Clerk.*

24 [Endorsed:] 2673. Bristol, *ss*—Sup ct. Commonwealth vs. R. G. Riley. (Copy.) Def't's Motion to Quash. Filed & Overruled & def't appeals & excepts, June 21, 1910. Edwin L. Barney, Jr., Ass't Clerk.

25 BRISTOL, ss:

Superior Court.

COMMONWEALTH
vs.
RICHARD G. RILEY.

*Defendant's Exceptions.*

This was a complaint alleging that the defendant violated the law forbidding the employment of a woman at a time other than that stated in a notice posted in a room of the manufacturing establishment in which the woman was employed. A copy of the complaint is hereto annexed. The District Attorney nol prossed that portion of the complaint relative to an employee other than Nora Callahan previous to the empanelling of the jury; and the defendant previous to said empanelling and after the said nol prossing of said portion of said complaint argued his motion to quash the complaint, a copy of which is hereto annexed. The presiding Judge overruled the motion to quash and the defendant duly excepted.

Two witnesses testified for the Commonwealth as follows:

My name is Mary E. Halley. I am a state factory inspector. The women and minor end is the principal part of my work. In the performance of my duty I go around from place to place in the various mills. On February 24, 1910, I went to the Davol Mills in Fall River shortly after ten minutes of one. I went first into the weaving room on the first floor. The complaint alleges a violation in the carding room or speeder room on the second floor where they make spools, get the spools ready, sometimes filling is made from it and sometimes warps. The machinery there is fine and coarse speeders and slubber frames. I went up in the card room or speeder room five minutes of one. I had my watch with me and it had the correct time. I had tested that just previous to going out to the mill. I got my time from one of our inspectors. My watch had the correct time. When I got up into the card room I saw the overseer come out from the office and take his watch out and look at it, and start the first speeder frame. When I saw him I also looked at my watch. The speeder frame is a long frame with a number of spindles on which large spools are placed. After the frame is started that begins the operation, and the operative has to see that the work is properly done, and if any threads break out, tie them or piece them up. When the frame is started these spools begin revolving. The machine is started by a lever. You can throw that lever on or off.
It stops all the spools when thrown off and starts them up
26 when put on. The operative performs the work by piecing up those ends if they should break and putting on extra spools. They call the operators there speeder tenders. When the threads break they piece them up and replenish the spools when they become empty. Nora Callahan started her frame herself, and when she saw

everything was in proper running order she looked around and then walked to the window. Her frame was located right back of the other one. She started the frame and then looked it over. I had a conversation with Mr. Riley after I visited the engine room, in his office. I found Mr. Riley there. I asked him if he was aware of the time they started up. I told him I found they were running before the time. I asked Mr. Riley if he was aware of the time they started up. He said "wasn't it all right, five minutes of?" He said "is your watch correct?" I said "yes." He took his watch out and looked at it, and looked at mine, and said, "they are enough alike to be all right." He said he would see his engineer and ask him if there was any reason why he started. His orders were not to start before a certain time. He sent for his engineer. I was there when the engineer came. The defendant asked the engineer what time he started up. He began to explain that he started earlier. I don't recall what else Mr. Riley said, only we compared the time and he said he couldn't be everywhere at the same time, that he gave his orders, and couldn't be everywhere at the same time. He said "are we not allowed five minutes?" I said, "I don't know, but that he had started before five minutes, that he had started at seven minutes." He said possibly there was something about the engine that they had to overhaul. No other conversation only that I had to report to Boston. I couldn't say whether I called Miss Callahan's attention to the time or not. I know I had her write her name. When I went out of the room the frame was running. I saw a printed notice there.

Witness offered a printed copy in evidence and testified, "This is a copy."

The same was put in evidence by the government and a copy is hereto annexed.

The 24th day of February was Thursday.

On cross-examination, the witness testified as follows:—

I was in the card room or speeder room until one o'clock. About five minutes. I then went to the engine room. Then I went to the office where I saw the defendant.

Q. Something was said there between you and Mr. Riley about starting up?

A. Yes.

Q. And that the proper time allowed to start the engine was five minutes before the schedule time?

A. Yes.

Defendant offered to prove that there was an understanding and agreement with the State officials that the engine might be started five minutes before schedule time.

The District Attorney objected. The Court excluded the evidence offered and defendant duly excepted.

27 Q. You said in your conversation with Mr. Riley, as I recall it, that he asked you if they were not allowed to start the engine five minutes before time?

A. I said you have taken seven minutes.

Q. You replied you started seven minutes before?
A. Yes.
Q. Did you mean by that he was allowed five minutes?
A. I have never said that Mr. Riley could be allowed five minutes.
Q. What did you mean when you said he asked you if he wasn't allowed five minutes to start his engines before the schedule time?
A. He asked me if it was the custom.
Q. Wasn't the word you used before "allowed"?
A. Yes. And I replied I had nothing to do with what they were allowed; that they had started seven minutes before the time.
Q. Had you previous to this time complained of any mills for allowing persons to start to work less than five minutes before the schedule time?
A. No.

The defendant offered to show that they hadn't prosecuted any mills allowing any woman to work five minutes before the time on an understanding to that effect between the State inspectors and the mills.

The Court excluded the evidence offered and the defendant duly excepted.

The witness further testified,—I have been inspector of this kind of factory about eighteen years, and have been in them a great many times, and seen them start a good many times.

The defendant offered to show that in a reasonably large mill it takes from three to five minutes to get all machines in operation after they start to put them in operation.

On objection this question was excluded and the defendant duly excepted.

Q. And in starting the machinery one machine is started and then another and then another until the whole room is in operation?
A. Usually.
Q. They couldn't start all the machines at once, throw on the whole load because it would break the machinery, or do something like that, wouldn't it be apt to?
A. Yes.

NORA CALLAHAN testified as follows:

My name is Nora Callahan. I work in the Davol Mills, in the carding room. Am speeder tender and run two frames. They have spindles on which the thread is wound. My duty is to attend to the different spools on these spindles. I have to keep watch of the threads, piece them up if they break off, and keep the machine clean, and when the spools get full take them off. I remember the day in question. Miss Halley did not call my attention to the time. I started my frame just before Miss Halley took my name, and I signed my name in the book. I didn't know about the time.

28 Cross-examination:

When Miss Halley spoke to me I had just started my frames and was at the window. I was looking out the window when she spoke

to me. When she came up to me she asked me to sign my name. I hadn't pieced up any threads or done anything before she spoke to me. I started to work that morning ten minutes of seven. I stopped at twelve o'clock. I just started to work again when Miss Halley spoke to me. I had just started my machine and walked over to the window. I stopped work that afternoon at half past five. We stop in our room at half past five and Saturdays nine, half past nine or ten o'clock. It was so on the 24th day of February and every other day. I have worked in that room eighteen years. I didn't work ten hours that day. I don't ever remember of working ten hours a day. I didn't work fifty-six hours that week.

Redirect examination:

Q. By what watch or clock did you quit that afternoon?
A. There is a clock right near where I work.
Q. In the room?
A. Yes.
Q. Did you notice particularly that day?
A. It was——
Q. On that day?
A. Yes, we always look up to see, the overseer he tells us to stop at half past five.
Q. These are your orders from the overseer?
A. Yes.

It was admitted by the defendant through counsel that as superintendent of the Davol Mills he has general charge of the operations of the mill, and that the overseers are subject to his orders. It was also admitted for the purposes of the trial that the Davol Mills was a manufacturing corporation, and that the room in which the woman worked and in which the notices were posted was a part of the mill's manufacturing establishment.

The above was all the evidence in the case. The defendant introduced no evidence, but upon the conclusion of the government's case, requested with other rulings the following:—

1. There is no evidence that will warrant the jury in finding the defendant guilty of any offence under the laws of this Commonwealth.

2. Unless the jury are satisfied beyond a reasonable doubt that the defendant himself employed the alleged woman, the defendant is not guilty.

3. On the whole evidence the defendant is not guilty.

29 The Court refused to give any of the above rulings requested and the defendant duly excepted. The jury returned a verdict of guilty.

The defendant being aggrieved by the aforesaid rulings and refusals to rule, and having duly excepted thereto, prays that his exceptions may be allowed.

By His Attorneys, JENNINGS, MORTON & BRAYTON.

Exceptions allowed.
W. F. D., *J. S. C.*

*Complaint.*

COMMONWEALTH OF MASSACHUSETTS:

To Augustus B. Leonard, Esq., Clerk of the Second District Court of Bristol, in the County of Bristol, and Justice of the Peace within and for the County of Bristol:

Mary E. Halley at Fall River, in said County, in behalf of said Commonwealth, on oath complains that Richard G. Riley of Fall River, in the County of Bristol, at Fall River aforesaid, in the County aforesaid, on the 24th day of February in the year of our Lord nineteen hundred and ten, being then and there the superintendent of the Davol Mills, a corporation duly established according to law and carrying on in said Fall River a manufacturing establishment, to wit: a mill for the manufacture of cotton goods, in which establishment women were then and there employed in laboring and in which manufacturing establishment the said corporation had caused to be posted before the said 24th day of February, and on said 24th day of February still had and continued to have posted in a conspicuous place in said establishment in a certain room therein in which said room were employed certain women to wit: Annie Manning and Nora Callahan, printed notice that said women were required to work in laboring during the hours set forth in said notice, which said notice was of the following tenor, to wit:—

30 *Time Table of the Hours of Labor Required of Minors and Women Employed in this Room.*

| | Hours. | Commence work at | Stop work at | Time allowed for dinner. Hour begins. | Hour ends. |
|---|---|---|---|---|---|
| Monday ..... | 10.10 | 6.50 | 6.00 | 12 | 1 |
| Tuesday ..... | " | " | " | " | " |
| Wednesday .... | " | " | " | " | " |
| Thursday ..... | " | " | " | " | " |
| Friday ..... | " | " | " | " | " |
| Saturday ..... | 5.10 | " | 12 | | |

did then and there employ in laboring in said mill and in the room in which said notice was posted the said women Annie Manning and Nora Callahan at a time other than that stated in said printed notice, to wit, at five minutes of one o'clock 12.55 M. on said 24th day of February, the said employment of the said Annie Manning and Nora Callahan at the time aforesaid not being then and there or any part thereof in compensation for or to make up for any time lost in consequence of the stopping of any machinery of said corporation upon which said Annie Manning or Nora Callahan was employed or dependent for employment.

MARY E. HALLEY.

BRISTOL, ss:

Received and sworn to this first day of March in the year of our Lord one thousand nine hundred and ten.

Before me,

A. B. LEONARD,
*Clerk of the Second District Court of Bristol and Justice of the Peace.*

*Motion to Quash.*

And now comes the defendant and moves that said complaint be quashed and dismissed and said defendant discharged, for that the same does not set out any offence under the laws of this Commonwealth in that:

31 1. It alleges that the defendant personally employed women at a time other than that stated in a notice posted by another.

2. The provision of the statute under which the offence is alleged to have been committed by the defendant's violation thereof is unconstitutional and void.

3. It charges two offences in one count.

By His Attorneys, JENNINGS, MORTON & BRAYTON.

Filed and overruled and defendant appeals. June 21, 1910.

*Notice.*

(Sections 48 and 49, Chapter 514, Acts of 1909.)

*Regulating the Hours of Labor in Manufacturing or Mechanical Establishments.*

SECTION 48. No child and no woman shall be employed in laboring in a manufacturing or mechanical establishment more than ten hours in any one day, except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and, in no case, shall the hours of labor exceed fifty-eight in a week; and if any child or woman shall be employed in more than one manufacturing or mechanical establishment, the total number of hours so employed shall not exceed fifty-eight in any one week. From and after the first day of January in the year nineteen hundred and ten, no child and no woman shall be employed in laboring in a manufacturing or mechanical establishment more than ten hours in any one day, except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-six in a week, except that in any such establishment where the employment

is by seasons, the number of such hours in any week may exceed fifty-six, but not fifty-eight, if the total number of such hours in any year shall not exceed an average of fifty-six hours a week for the whole year, excluding Sundays and holidays. Every employer shall post in a conspicuous place in every room in which such per-
32 sons are employed a printed notice stating the number of hours' work required of them on each day of the week, the hours of commencing and stopping work, and the hours when the time allowed for meals begins and ends or, in the case of establishments exempted from the provisions of sections sixty-seven and sixty-eight of this act, the time, if any, allowed for meals. The printed forms of such notices shall be provided by the chief of the district police, after approval by the attorney-general. The employment of such person at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this section unless it appears that such employment was to make up time lost on a previous day of the same week in consequence of the stopping of machinery upon which he or she was employed or dependent for employment; but no stopping of machinery for less than thirty consecutive minutes shall justify such overtime employment, nor shall such overtime employment be authorized until a written report of the day and hour of its occurrence and its duration is sent to the chief of the district police or to an inspector of factories and public buildings.

SECTION 49. A parent or guardian who permits a minor under his control to be employed in violation of either of the two preceding sections, and any person who, either for himself or as superintendent, overseer or agent for another, employs any person in violation of the provisions of either of said sections, or fails to post the notice required by either of the preceding sections, or makes a false report of the stopping of machinery under the provisions of the preceding section, shall be punished by a fine of not less than fifty nor more than one hundred dollars. A certificate of the age of a minor made and sworn to by him and by his parent or guardian at the time of his employment in a mercantile, manufacturing or mechanical establishment shall be prima facie evidence of his age in any prosecution under the provisions of this section.

| | Hours. | Commence work at— | Stop work at— | Time allowed for dinner. | | Time allowed other meals. | |
|---|---|---|---|---|---|---|---|
| | | | | Hour begins. | Hour ends. | Hour begins. | Hour ends. |
| Monday, | 10.10 | 6.50 | 6.00 | 12.00 | 1.00 | | |
| Tuesday, | 10.10 | 6.50 | 6.00 | 12.00 | 1.00 | | |
| Wednesday, | 10.10 | 6.50 | 6.00 | 12.00 | 1.00 | | |
| Thursday, | 10.10 | 6.50 | 6.00 | 12.00 | 1.00 | | |
| Friday, | 10.10 | 6.50 | 6.00 | 12.00 | 1.00 | | |
| Saturday, | 5.10 | 6.50 | 12.00 | | | | |

This form of Notice is the Form as approved by the Attorney-General in accordance with the provisions of law, as above required.

J. H. WHITNEY,
*Chief Mass. District Police.*

Copy.
Attest:
SIMEON BORDEN, *Clerk.*

34 [Endorsed:] No. —. Bristol. Commonwealth vs. Richard G. Riley. Sup. Jud. Court. 1911. District Attorney for Commonwealth. Jennings, Morton & Brayton for Defendant. Defendant's Exceptions.

35 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, January 1, 1912.

In the Case of—

COMMONWEALTH
vs.
RICHARD G. RILEY.

pending in the Superior Court for the County of Bristol

Ordered, That the Clerk of said Court in said County make the following entry under said case in the Docket of said Court, viz:

Exceptions overruled.

By the Court,

C. H. COOPER, *Clerk.*

January 1, 1912.

*Brief Statement of the Grounds and Reasons of the Decision.*

The statute upon which this complaint is founded is constitutional the complaint is sufficient in form and it cannot be said that there was not enough evidence to support a verdict of guilty. The reasons are set forth at length in the opinion filed herewith.

A true copy.

Attest:

SIMEON BORDEN, *Clerk.*

A true copy.

Attest:

SIMEON BORDEN, *Clerk.*

36 [Endorsed:] 2673. Criminal. Supreme Judicial Court for the Commonwealth. Rescript—Bristol County. Commonwealth vs. Richard G. Riley. Rec'd in Clerk's Office Jan. 4th, 1912. Edwin L. Barney, Jr., Ass't Clerk.

37 *Copy of Docket Entries.*

Jennings, Morton & Brayton.

P. N. G.

Vio. Labor Law.

2673.

COMMONWEALTH
VS.
RICHARD G. RILEY, Ap't.

April, 1910. Mo. to quash filed & overruled June 21-'10 & def't appeals & excepts June 21-'10. So much of complaint as alleges violation with reference to Annie Manning is nol prossed June 21-'10. Verdict guilty June 22-'10. Sentenced to pay a fine of Fifty Dollars ($50.00) & stand committed &c. June 22-'10. Sentence stayed & def't ord. to recog. anew personally in $100. to pros. excepts. & abide final judgment &c. June 22-'10. Time for excepts. extend. to & includ. Aug. 1, 1910. June 22-'10, Def'ts excepts. June 25-'10, All'd in sub. draft Jan. 6-'11. Excepts. Overruled—Rescript rec'd Jan. 4-'12.

A true copy.
Attest:

SIMEON BORDEN, *Clerk.*

38 *Copy of Application for Writ of Error.*

COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

Superior Court.
COMMONWEALTH
VS.
RICHARD G. RILEY.

Application for Writ of Error.

To the Honorable John A. Aiken, Chief Justice of the Superior Court of the Commonwealth of Massachusetts:

Your Petitioner, Richard G. Riley of Fall River, in the County of Bristol in this Commonwealth respectfully represents that heretofore, to wit:—on the twenty-second day of June 1910, at New Bed-

ford, in the said County of Bristol, upon a complaint in which the Commonwealth of Massachusetts was Plaintiff and your Petitioner was Defendant, a judgment of guilty was rendered against your Petitioner in the Superior Court within and for said County of Bristol, and your Petitioner was sentenced to pay a fine of Fifty Dollars and stand committed until said fine was paid; that certain questions of law having arisen upon said trial the execution of said sentence was stayed by order of said Superior Court until said questions of law could be finally determined; that your Petitioner duly filed a motion to quash and dismiss said complaint which was overruled by said Superior Court, that your petitioner duly excepted to the overruling of said motion and also to certain rulings and refusals to rule made by said Superior Court at the trial of said complaint, which said exceptions being afterwards duly set forth in a bill of exceptions were allowed by the presiding Justice of the Superior Court and were entered in and considered by the said Supreme Judicial Court, which was the highest Court of law
39 and equity of said Commonwealth in which a decision could be had in said suit; that by a decision of said Supreme Judicial Court handed down on the fourth day of January 1912, your Petitioner's exceptions were overruled and the decision of said Superior Court was thereby affirmed and became and is a final judgment, and said sentence may be executed at any time on this defendant; that the Petitioner contended before the Superior Court and before the Supreme Judicial Court and still contends that the Statute under which he stands convicted and sentenced was and is in violation of the Constitution of the United States, and that in and by said judgment against your Petitioner there was drawn in question the validity of a Statute of the Commonwealth of Massachusetts and of the authority exercised thereunder, on the ground that said Statute was repugnant to the Constitution and laws of the United States; that the decision of the Supreme Judicial Court and of the Superior Court was in favor of such validity and was against the rights and privileges set up and claimed by the Petitioner under the Constitution of the United States, and that in and by said judgment and decision of the Superior Court and Supreme Judicial Court there was and is drawn in question the construction of a clause of the Constitution of the United States, to wit:—the Fourteenth Article of Amendment of the United States Constitution, Section I; that the decision of said questions was against the rights, privileges and immunities specially set up and claimed under such clause of the said Constitution and that a manifest error has happened to the great damage of your Petitioner, as more fully appears in the Assignment of Errors filed herewith.

Wherefore your Petitioner prays that a writ of error from
40 the Supreme Court of the United States to the Superior Court for the County of Bristol and Commonwealth of Massachusetts may issue in due form of law to correct the errors so complained of and the judgment and sentence aforesaid; and that a transcript of the record proceedings, and papers in this case, duly

authenticated, may be sent to the Supreme Court of the United States; and that the said writ of error may issue now.

Dated this eighth day of March, 1912.

RICHARD G. RILEY,
By His Attorneys, ANDREW J. JENNINGS, JAMES M. MORTON, Jr., ISRAEL BRAYTON.

Application allowed.

JOHN A. AIKEN,
*Chief Justice of the Superior Court.*

A true copy.
Attest:

SIMEON BORDEN, *Clerk.*

[Endorsed:] Filed March 18, 1912. S. Borden, Clerk.

41 *Copy of Assignment of Errors.*

COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

Superior Court.

COMMONWEALTH OF MASSACHUSETTS
vs.
RICHARD G. RILEY, Defendant.

Assignment of Errors.

Richard G. Riley, the above-named defendant plaintiff in error says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

I.

The Court erred in ruling and deciding that the provisions of Section 48 of Chapter 514 of the Acts of Massachusetts Legislature of the year 1909, under which the defendant stands convicted are not in conflict with, and in violation of, the provisions of Section I of Article XIV of the Amendments to the Constitution of the United States.

II.

The Court erred in ruling and deciding that the Massachusetts Statute under which the defendant stands convicted is not in violation of the Constitution of the United States, as being an abridgment of his privileges and immunities, a denial of the equal protection of the laws, and an infringement of his rights of liberty and property therein guaranteed.

III.

The Court erred in ruling and deciding that by the provisions of the said Act the defendant is not deprived of liberty and property without due process of law.

42 IV.

The Court erred in ruling and deciding that the provisions of said Act do not deny to the defendant the equal protection of the law.

V.

The Court erred in refusing to quash and dismiss said complaint on the grounds that the provisions of the Statute on which it is founded are in violation of the Constitution of the United States, especially Section I, of Article XIV of the Amendments thereto, and that the Acts charged in said complaint do not constitute a crime.

VI.

The Court erred in refusing to rule that upon all the evidence the defendant was not guilty of any crime or offence.

VII.

The Court erred in refusing the following ruling requested by the defendant, viz:—

I. There is no evidence that will warrant the jury in finding the defendant guilty or any offence under the laws of this Commonwealth.

VIII.

The Court erred in refusing the following ruling requested by the defendant, viz:—

2. On the whole evidence the defendant is not guilty.

IX.

The Court erred in entering judgment against the defendant and in sentencing him thereon.

43 Wherefore by reason of the said Errors, the defendant prays that the Judgment against him herein rendered may be reversed.

RICHARD G. RILEY,
By His Attorneys, ANDREW J. JENNINGS, JAMES M. MORTON, Jr., ISRAEL BRAYTON.

A true copy.
Attest:

SIMEON BORDEN, *Clerk.*

[Endorsed:] Filed March 18, 1912. Simeon Borden, Clerk.

4—228

44 *Copy of Bond.*

Know all men by these presents, That we, Richard G. Riley and George H. Hills both of Fall River in the Commonwealth of Massachusetts are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of one thousand dollars to be paid to the said Commonwealth, its successors or Assigns; to which payment well and truly to be made we bind ourselves, our Heirs, Executors and Administrators, jointly and severally, by these Presents.

Sealed with our seals, and dated the seventh day of March in the year of our Lord one thousand nine hundred and twelve.

Whereas lately at the Superior Court sitting at New Bedford within and for the County of Bristol in a suit pending in said Court between the Commonwealth of Massachusetts and said Richard G. Riley judgment was rendered against the said Riley and he was sentenced to pay a fine of fifty dollars and stand committed until said fine be paid and the said Riley having procured a writ of error and filed a copy thereof in the clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the Second Monday of October next,

Now the condition of the above obligation is such, that if the said Riley shall prosecute his said writ of error to effect, and answer all damages and costs and shall surrender himself to abide the judgment and sentence of said Superior Court if he fail to make his plea good, then the above obligation to be null and void, otherwise to remain in full force and virtue.

45 RICHARD G. RILEY. [L. S.]
GEORGE H. HILLS, *Treas.* [L. S.]

Signed, sealed and delivered in presence of
J. M. MORTON, JR.

Approved:
JOHN A. AIKEN,
*Chief Justice of the Superior Court.*

A true copy.
Attest:
SIMEON BORDEN, *Clerk.*

[Endorsed:] Filed March 13, 1912. Simeon Borden, Clerk.

46 COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

Superior Court.

COMMONWEALTH
vs.
RICHARD G. RILEY.

*Direction in Regard to Record.*

The Clerk of the Superior Court is hereby notified that the defendant in the above-entitled action desires copies of all papers in or pertaining to the record of the above-entitled cause included in the record which is certified to the U. S. Supreme Court upon the writ of error herein.

JENNINGS, MORTON & BRAYTON,
*Attorneys for Defendant.*

Service of the foregoing direction is hereby accepted.
JAMES M. SWIFT,
*Attorney General.*

A true copy.
Attest:

SIMEON BORDEN, *Clerk.*

[Endorsed:] Commonwealth vs. Richard G. Riley. Copy Direction in Regard to Record. Filed March 21, 1912. S. Borden, Clerk.

47 COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

I, Simeon Borden, Clerk of the Superior Court, within and for the County of Bristol, hereby certify that the foregoing is a true copy of the record and proceedings in the suit #2673 Commonwealth vs. Richard G. Riley, with all things concerning the same.

In witness whereof I have hereunto subscribed my name and affixed the seal of said Court, at Taunton, this twenty-first day of March A. D. 1912.

[Seal The Superior Court.]

SIMEON BORDEN, *Clerk.*

48 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *March* 15, 1912.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of Commonwealth vs. Richard G. Riley decided on the 1st day of January, 1912.

HENRY WALTON SWIFT,
*Reporter of Decisions.*

49 RUGG, *C. J.*:

This is a complaint against the defendant as superintendent of the Davol Mills for employing a woman contrary to the provisions of St. 1909, c. 514, s. 48. This section limits the time during which minors under the age of eighteen years and women may be employed in labor in manufacturing and mechanical establishments, to fifty-six hours in each week, and to ten hours in each day, "unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week," except that where employment is by seasons the hours of labor in each week may exceed fifty-six, but not fifty-eight, if the total number of hours of such employment in any year shall not exceed an average of fifty-six hours in each week for the whole year, excluding Sundays and holidays. St. 1911, c. 484, by which the basis of the labor for each week has been reduced from fifty-six to fifty-four hours, was not in force at the time of the offense here complained of.

1. The constitutionality of a statute restricting the hours
50 of employment of women and children in a single manufacturing service was upheld in 1876 by this court. Commonwealth v. Hamilton Manuf. Co. 120 Mass. 383. See also Opinion of the Justices 163 Mass. 589, at 594. There can be no doubt as to the constitutionality of such a statute in its application to minors, who are not sui juris, and are in some respects wards of the State. See Berdos v. Tremont & Suffolk Mills, 209 Mass. 489. But the subject latterly has been debated rather widely, so far as applicable to adult women. There appears, however, to be no ground to doubt the soundness of our somewhat early decisions, and we adhere to it, both on reason and on the doctrine of stare decisis. Recently such statutes have been held to be valid under the Feneral Constitution and generally in other jurisdictions. Muller v. Oregon, 208 U. S. 412, affirming State v. Muller, 48 Ore. 252. Wenham v. State, 65 Neb. 394. State v. Buchanan, 29 Wash. 602. Commonwealth v. Beatty, 15 Penn. Sup. Ct. 5, 17. Withey v. Bloem, 163 Mich. 419. Ritchie v. Wayman, 244 Ill. 509. People v. Bowes-Allegretti Co. 244 Ill. 557. We do not regard Burcher v. People, 41 Col. 495, and In matter of Mary Maguire, 57 Cal. 604, which were decided according to peculiar constitutional provisions of these States, as bearing upon the question. In Ritchie v. People, 155 Ill. 98, a statute limiting the hours of labor for women to eight hours in each day and forty-eight hours in each week was held unconstitutional. On the distinction between the eight-hour and a ten-hour day, a distinction which in reason seems rather difficult to maintain, this case is not treated plainly by the court as overruled in Ritchie v.
51 Wayman, 244 Ill. 509, where an act restricting such labor to ten hours in each day was upheld. But however that may be, it is certain that the difference between an act of the Legislature which permits women to labor in designated employuent, fifty-six hours in each week, and one permitting such labor for not more than sixty hours is so small as not to require a difference in the application of constitutional principles. Whatever may be the bounds

fixed by the natural and constitutional rights to freedom of all individuals, including women, to the power of the Legislature to determine maximum hours of labor for women, it is clear that the present statute does not transgress those bounds.

2. This statute plainly prohibits the employment of women longer than fifty-six hours in any week, or longer than ten hours in any day, save for the purpose of securing shorter hours of labor on one day within the maximum of fifty-six hours per week, and for other purposes not here in issue. The complaint at bar is not framed upon that part of the statute. It is not claimed that the defendant employed any laborers for a longer period in any day or week than the law permits.

3. The crime which is charged is that first created by St. 1902, c. 435, and retained in subsequent re-enactments. It is necessary to examine with exactness precisely what is inhibited. The first part of said s. 48 provides that "No child and no woman shall be employed in laboring" in the specified occupations except as permitted. It then enacts that "Every employer shall post in a
52 conspicuous place in every room in which such persons are employed a printed notice stating the number of hours' work required of them on each day of the week, the hours of commencing and stopping work, and the hours when the time allowed for meals begins and ends * * * [with a further provision in said c. 514, s. 67, that the meal hour shall be the same where the women and children employed number five or more, save that an exception is made in s. 69 of certain employment where continuous processes are required]. The employment of such person at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this section," with exceptions not here material.

The meaning of this language must be determined. It ought to be read in the light of the general purpose of the Legislature in enacting it. That purpose was to establish the rights of children and women, who are treated as in a certain sense dependent and under an industrial disadvantage by reason of age and sex, to regular hours of employment for limited and designated periods of time with fixed intervals for rest and refreshment, and to protect them in the enjoyment of the rights thus established, to the end that the health and endurance of the individual may be insured and the ultimate strength and virility of the race be preserved. The requirement for the posting of notices where "such persons" are employed means wherever women and children are regularly employed for any substantial number of hours daily. It applies to every employer of "such persons." Both phrases are wholly general and without restriction or exception. It is
53 not fairly open to the construction that it applies only to establishments where "such persons" are regularly employed more than ten hours in any one day, and that it does not affect those when on no day is there employment for more than ten hours. All those, who in manufacturing and mechanical establishments employ women and children in practically permanent labor, are required to post the notices which fix definitely the hours of work. As

was pointed out in Commonwealth v. Osborn Mill, 130 Mass. 33, statutes of that character are not intended, either by letter or in spirit, to apply to any except women employed permanently, who labor for full working days, whatever the length may be. The statute does not apply to those who are hired temporarily or intermittently to perform tasks subsidiary to the main business of the factory or shop. A woman engaged for an hour or two a day sweeping the floors or washing windows, although perhaps technically in some aspects a laborer, would not come within the purview of the statute, having regard to the ends to be subserved by it and the general grounds on which its constitutionality is sustained. But the requirement of the statute is that as to those regularly employed for the full shop day there must be a posting of the notices with the definite statement of the hour of starting, the limits of time for the intermission, and the hour of closing. These hours may be fixed by agreement of parties with absolute freedom within the maximum permitted save in a particular not here material. But when once fixed they must be rigidly adhered to. Employment of women and children outside the hours thus agreed upon is prohibited, and infraction of this prohibition is punish-
54 able as a crime.

4. This being the meaning of this section of the statute, the question is whether as thus construed it is constitutional. Arguments which would be decisive against its constitutionality if it applied to men as well as to women (Lochner v. New York, 198 U. S. 45, Opinion of the Justices, 208 Mass. 619, 622) may be laid aside. It is to be noted that it applies only to "manufacturing" and "mechanical" establishments. These words as defined in s. 17 of the same act include those places popularly known as mills and shops, where, as matter of common knowledge, continuously operating machinery and constant service by attendants throughout the whole day are not essential to economical manufacture, and where ordinarily machinery is stopped for the noon hour. The statute does not extend in that respect to stores or to branches of manufacture or industry where continuity of labor by somebody is necessary from the beginning to the end of the work day. Other provisions are made for these classes of employment. See said c. 514, ss. 47, 68, 69, 70, which recognize the practical difficulty, if not impossibility, of requiring a suspension of all labor by regular employees during a midday or other meal intermission, and do not prohibit labor except before the beginning and after the end of the established working day. A classification of employment of women and children confined to manufacturing and mechanical establishments of this character is within the legislative power. Such a classi-
fication is sustained as valid when it can be ascertained to rest
55 upon some sound principle, and to be not arbitrary in its nature. There is a legislative right of reasonable selection among various businesses and industries for the operation of laws general in their application on the basis chosen, and so long as this selection is not arbitrary, whimsical, unnecessary or unreasonable, it cannot be pronounced unconstitutional. The classification of

manufacturing establishments alone for limitation of hours of labor by women was held constitutional in Commonwealth v. Hamilton Manuf. Co. 120 Mass. 383. See also for kindred illustrations of the principle, in addition to cases heretofore cited, Dewey v. Richardson, 206 Mass. 430; Griffith v. Connecticut, 218 U. S. 563; Lindsley v. Natural Carbonic Gas Co. 220 U. S. 61; Atkin v. Kansas, 191 U. S. 207; Chicago, Rock Island & Pacific Railway v. Arkansas, 219 U. S. 453; Assaria State Bank v. Dolley, 219 U. S. 121.

It may be conceived that the purpose of requiring by the imposition of a penalty a strict observance of the posted hours of labor was to facilitate the enforcement of the law. It might be regarded as difficult to detect violations of the prohibition against employment for a longer time in the day or week than is allowed, while it would be comparatively easy to observe working outside of designated hours. Although difficulty in enforcing a statute can never justify unconstitutional "modes of accomplishing a laudible purpose, and of carrying into effect a good and wholesome law" (Fisher v. McGirr, 1 Gray, 1, 31), reasonable regulations to this end should be upheld. When the constitutionality of the statute limiting the hours of labor of women is settled, the means by which the
56 aim of the statute may be forwarded within reasonable bounds are matters for legislative determination. This statute requires the hours of labor to be stipulated in advance, and then to be followed until a change is made. It does not by its terms establish a schedule of hours. This is left to the free action of the parties. Nor does it in the sections now under consideration restrict the right to labor to any particular hours. See People v. Williams, 189 N. Y. 131. It simply makes imperative strict observance of any one table of hours of labor while it remains posted.

The end of the statute is the protection of women within constitutional limits, and the requirement that the hours posted in the notice shall be followed is a means to effectuate the attainment of that end. That it in substance also requires performance of the contract implied from laboring under the notice does not detract from the force of the prohibition. See Ellis v. United States, 206 U. S. 246, 255. It is not an impairment of the freedom of contract of the citizen to require that certain terms of a contract shall be posted in such form as not to be subject to mistake or dispute. This in principle is going no further than the statute of frauds goes. The property of the woman in her labor is not taken away, nor are the privileges and immunities of citizenship unduly abridged thereby. The rights of the employer are secured against the whim, caprice, mistake or ill-will of the laborer by s. 70 of the act, which requires actual knowledge or consent on the part of the employer or his superintendent or overseer or agent to the violation of the
57 time fixed in the posted notice before there can be guilt. This statute is regulation to a small detail; it is close to the line, but we cannot say that, the end being constitutional, this means of reaching that end are unreasonable, unnecessary or arbitrary, and hence beyond the power of the Legislature. The section of the statute under which this complaint is made, taken in connection with

the other provisions to which we have referred, is not obnoxious to the Constitution of the United States or of this Commonwealth.

5. The complaint is sufficient in form. It alleges that the woman, whose employment outside of the hours posted in the notice is charged, was "required to work in laboring during the hours set forth in said notice," and thus avoids the defect which was held to be fatal in Commonwealth v. Osborn Mill, 130 Mass. 33. It alleges also that the defendant, being then and there the superintendent of a named manufacturing corporation, "did then and there employ in laboring in said mill" a certain woman. This is a sufficiently direct and positive averment, that the defendant employed the woman in his capacity as superintendent, and brings him within the substance of the description "as superintendent * * * for another" used in s. 49 of said c. 514. Nothing is left to inference or implication as in Commonwealth v. Dunn, 170 Mass 140, 142, relied on by the defendant.

6. The evidence on which the defendant was found guilty appears to be meagre. But in view of decided cases it is not so slight as to be capable of being pronounced insufficient. It could not have been ruled rightly that the defendant did not em-
58 ploy the woman. The word "employ" is used in divers significations, such as to have work or to make use of the service of another. Bingham v. Scott, 177 Mass. 208, 211. In this sense it cannot be said the defendant as superintendent did not employ Nora Callahan by allowing her to work in the carding room of the mill. The concession by the defendant that as superintendent of the Davol Mills he had general charge of the operations of the mill, and that the overseers were subject to his orders could have been found to make the defendant as responsible for the act of an overseer in permitting or consenting to the work of Nora Callahan as he would have been if himself the employer. This means that he might have been found guilty, even though ignorant of the specific act in question. But he could have been held liable for such an act by one of his overseers only if he participated in the prohibited act, or authorized, approved or countenanced it in such a way as to assume initial responsibility for it. It must be assumed that adequate and comprehensive instructions were given upon this point. The only question raised by the defendant in this connection is that there was not sufficient evidence to warrant a conviction. This ruling could not have been given in view of Commonwealth v. Nichols, 10 Met. 259, Commonwealth v. Briant, 142 Mass. 463, Commonwealth v. Stevens, 153 Mass. 421, and Commonwealth v. Riley, 196 Mass. 60.

The other exceptions are either expressly waived or treated as waived because not argued.

Exceptions overruled.

59 [Endorsed:] Commonwealth vs. Richard G. Riley. Certified copy of the opinion of the Supreme Judicial Court.

60 COMMONWEALTH OF MASSACHUSETTS,
*Bristol, ss:*

Superior Court.

I hereby certify that the record certified in the case of Commonwealth vs. Richard G. Riley comprises the following papers:

1st. A complete copy of the record of said case, including all papers on file therein.

2nd. A complete copy of the docket entries.

3rd. A copy of the opinion of the Supreme Judicial Court rendered therein; and all proceedings in said case with all things concerning the same.

SIMEON BORDEN, *Clerk.*

Endorsed on cover: File No. 23,150. Massachusetts Superior Court. Term No. 228. Richard G. Riley, plaintiff in error, vs. Commonwealth of Massachusetts. Filed April 8th, 1912. File No. 23,150.

23,150.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

**No. 228.**

RICHARD G. RILEY, PLAINTIFF IN ERROR

vs.

COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT
OF THE STATE OF MASSACHUSETTS.

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## BRIEF OF PLAINTIFF IN ERROR.

### STATEMENT OF CASE.

In this case the plaintiff claims that the provisions of Sections 48 and 49 of Chapter 514 of the Acts of 1909 of the Legislature of Massachusetts known as the Labor Law, under which he was convicted and sentenced, are unconstitutional and in violation of the provisions of Section 1, Article XIV of the Amendments of the Constitution of the United States, and that the State Court erred in deciding otherwise. (Record page 28.)

Section 48, Acts of 1909 (Record page 18) provides,

> "No woman shall be employed in laboring in a manufacturing establishment more than 10 hours in any one day, except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week, and in no case shall the hours of labor exceed fifty-six in a week," etc., etc.

It further provides, (Record page 19) that,

> "Every employer shall post in a conspicuous place in every room in which such persons are employed, a printed notice stating the number of hours work required of them on each day of the week, the hours of commencing and stopping work and the hours when the time allowed for meals begins and ends."

It further provides, (Record page 19)

> "The employment of such persons at any time other than as stated in said printed notice shall be deemed a violation of this section."

Said Section 49 provides (Record page 19)

> "Any person who either for himself or as superintendent, overseer or agent for another, employs any person in violation of the provision of either of said Sections (§§ 47, 48)* * * shall be punished by a fine of not less than fifty nor more than one hundred dollars."

The complaint (Record pages 2 and 3) alleged that the defendant (the plaintiff in error) as superintendent did employ a woman named Nora Callahan at five minutes of one o'clock (12:55 P. M.) on February 24, 1910, in a room wherein was posted a notice in which it was stated that the time of commencing work was 6:50 A. M., and of stopping work was 6 P. M., and that the time allowed for dinner begins at 12 M. and ends at 1 P. M.

The Superior Court of Bristol County tried the complaint. There was no evidence or claim that the defendant Riley had employed any laborers *for a longer period* than the law permitted and the Massachusetts Court so states in its decision (Record page 29). The plaintiff in error claimed (Record page 23) that the Statute was unconstitutional and in violation of said Article XIV. The Court ruled otherwise and the plaintiff in error excepted. He was found guilty, sentenced and thereupon argued his exceptions before the Supreme Judicial Court of Massachusetts which held that the Statute was not in violation of said Article XIV, overruled his exceptions and ordered entry thereof in the Superior Court (Record page 4), whereby the judgment against him became final and said sentence may be executed upon him. The plaintiff then applied for this writ of error. (Record page 23.)

## Specification of Errors Relied on by Plaintiff in Error.

I.

The Court erred in ruling and deciding that the provisions of Section 48 of Chapter 514 of the Acts of Massachusetts Legislature of the year 1909, under which the defendant stands convicted are not in conflict with, and in violation of, the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

II.

The Court erred in ruling and deciding that the Massachusetts Statute under which the defendant stands convicted is not in violation of the Constitution of the United States, as being an abridgment of his privileges and immunities, a denial of the equal protection of the laws, and an infringement of his rights of liberty and property therein guaranteed.

III.

The Court erred in ruling and deciding that by the provisions of the said Act the defendant is not deprived of liberty and property without due process of law.

IV.

The Court erred in ruling and deciding that the provisions of said Act do not deny to the defendant the equal protection of the law.

V.

The Court erred in refusing to quash and dismiss said complaint on the grounds that the provisions of the Statute on which it is founded are in violation of the Constitution of the United States, especially Section 1, of Article XIV of the Amendments thereto, and that the Acts charged in said complaint do not constitute a crime.

IX.

The Court erred in entering judgment against the defendant and in sentencing him thereon.

## ARGUMENT.

The plaintiff in error contends, in view of the language of this Court in its decisions upon the question of the right of a State to restrict the employment of labor, that said Section 48 is in violation of Article XIV of the Amendments to the United States Constitution.

*Holden vs. Hardy*, 169 *U. S.*, 366.
*Lochner vs. New York*, 198 *U. S.* 45
*Allgeyer vs. Louisiana*, 165 *U. S.*, 578, *p.* 589.
*Muller vs. Oregon*, 208 *U. S.*, 412

### I.

Section 48 as it stands, we submit, denies the equal protection of the laws.

The State Legislature virtually admits in the Statute itself that it does not deem it necessary for a woman's health to limit her employment in laboring to 10 hours a day, and it gives to every different employer the right by posting a printed notice, to employ a woman in laboring 11 hours a day on 5 days in the week provided he employs the woman such a number of hours on the sixth day as not to exceed 56 hours in the whole week. (Record page 19.)

If it be claimed that such a notice must first be approved by the Attorney General of the State, our reply is that the Statute says the *form* shall be approved; but if it is held that the Attorney General is to approve the number of hours and that the Attorney General may say what the number of hours shall be, then he could approve or disapprove different notices stating different numbers of hours of employment by different employers.

This seems to us to be a violation of the Fourteenth Amendment as denying equal protection of the laws.

*Yick Wo vs. Hopkins*, 118 *U. S.*, 356, *p.* 369.

The law is to be judged not by what may be done but by what can be done, under it.

*Curtin vs. Benson*, 222 *U. S.*, 78 (*Syllabus*).

## II.

The State Statute is not only a denial of the equal protection of the laws, but it is unreasonable and arbitrary in forbidding the employment of women more than 10 hours in any one day or 56 hours a week *in any mechanical and manufacturing establishment.*

The Oregon labor law (*Muller v. Oregon supra*) forbade one to permit a woman to work more than 10 hours a day in a *mechanical establishment or factory or laundry.* This Court restricted that decision to the work of women in laundries. The Court (Brewer, J.) says on page 423,

"For these reasons and without questioning in any respect the decision in Lochner vs. New York, we are of the opinion that it cannot be adjudged that the Act in question is in conflict with the Federal Constitution, so far as it respects the work of a female in a laundry and the judgment of the Supreme Court of Oregon is affirmed."

It may fairly be inferred from the language quoted that the Court did not mean to decide that the law was constitutional as applied to all mechanical establishments and factories without regard to the character or environment of the work, or to its probable effect either upon the health of the woman or upon the welfare of the community.

Section 17 of said Chapter 541 (Mass.) defines the meaning of various words and phrases used in the Chapter. It says,

> "Manufacturing establishment shall mean any premises, room or place used for the purpose of making, altering, repairing, ornamenting or finishing or adapting for sale any article or part of an article." (See Appendix.)

We submit that this includes labor in any room or place regardless of the kind of work or the sanitary conditions under which the work is performed.

For example, except perhaps as to a private house or room, the law would apply to all premises and every place or room where hats were made or trimmed, in a millinery shop, or where dresses were made or trimmed, in a dress making shop, and to clerks and stenographers in the office of the establishments, even though the work was being done by one, two or three women or children un-

der sanitary and favorable conditions which could not possibly affect their health. It seems to us that this Court must hold unconstitutional, a law which forbids such employments as these last mentioned, unless it is prepared to hold that the State under its police powers has the right to forbid the employment of women in doing any sort of labor for more than 10 hours a day.

*People vs. Williams*, 116 *N. Y. App. Div.* 379.
(Same case) *New York Supplement*, *Vol.* 100, *page* 337.
" " " " " *Vol.* 101, *page* 562.

III.

Even if the Statute be held constitutional as to the employment of women more than 10 hours in a day or 56 hours in a week, we submit that that is not the crime of which the plaintiff was charged and convicted.

Chief Justice Rugg in giving the decision of the State Court says, (Record page 29)—

"It is not claimed that the defendant employed any laborers for a longer period in any day or week than the law permits."

"The crime which is charged is that first created by the Statute of 1902, Chapter 435, and retained in subsequent enactments."

The Mass. Legislature in the earlier enactment of this Labor Law and its subsequent amendments thereto, evidently intended the law to be a reasonable restriction of the number of hours of labor during which a woman or minor could be employed, as a health provision.

Chapter 221, Acts of 1874 (Mass.), *the original ten-hour labor law* made it an offence to employ a woman in a manufacturing establishment more than 10 hours in any one day; but provided that a different apportionment of the hours of labor might be made for the purpose of shortening one day's labor in the week, the hours of labor however in no case to exceed 60 hours per week. (See Appendix.)

Chapter 194, Acts of 1880 (Mass.), amended the above Chapter 221 by providing that in case of such apportionment, a written notice stating the number of hours of work required should be posted in each room, and provided further that,—

"The employment of any such person *for a longer time* in any one day than the time stated in such notice shall be deemed a violation of this Act." (See Appendix.)

Revised Laws, Chapter 106, Section 24 (Mass.), enacted in the year 1902, changed the words last quoted to,—

"The employment of such person *for a longer time* in a day than that so stated shall be deemed a violation of the provisions of this section." (See Appendix.)

With either of these two amendments incorporated in it, the Statute contained but two prohibitions as to the daily employment of women.

(1) It forbade the employment of women in any event more than 10 hours in any one day.

(2) Under an apportionment to make one shorter day in the week, it forbade the employment of women *for a longer time* than that stated in the written notice (which was necessarily always more than 10 hours a day for five days in the week, but could not exceed 56 hours in any one week). (See opinion Rugg, C. J., Record page 29).

It will be noticed that an offence could be committed only by employing a woman *for a longer time* than stated in the notice or more than 58 hours in any one week.

Chapter 435, Acts of 1902 (Mass.) amended said Section 24 by striking out the words "for a longer time than that so stated" and inserting in place thereof the words, "*at any time other than as stated in said printed notice.*" (See Appendix.)

The Statute as thus amended was re-enacted in said Section 48, and is as follows:

"The employment of such person (woman) at a time other than as stated in said printed notice, shall be deemed a violation of this Act."

The plaintiff contends that the above clause is clearly unconstitutional and may be so declared without affecting the two prohibitions of the Statute forbidding the employment of women more than 10 hours a day and more than 56 hours a week.

*Edwards vs. Bruorton*, 184 *Mass.*, 529.
*Huntington vs. Worthen*, 120 *U. S.*, 97, *p.* 101.
*Field vs. Clark*, 143 *U. S.*, 649, *p.* 696.

An employer is no longer to be punished only in case he endangers a woman's health by employing her in laboring in any one day more than 10 hours or for a longer time than as stated in the notice, or more than 56 hours in a week, but he is now to be adjudged a criminal and punished if he employs her for one minute other than as stated in the notice.

## IV.

The Statute as amended by said Chapter 435 of the Acts of 1902, was incorporated in said Section 48. It is as follows, (Record page 19),—

> "*The employment of such person* (woman) *at a time other than as stated in said printed notice shall be deemed a violation of the provisions of this section.*"

It seems to us that the rules governing the Courts in the construction of such a law are as follows:

1. The law must be reasonable and not arbitrary.
2. If the Court cannot construe the law as a reasonable and proper exercise of the police power of the State, it will not hesitate to declare it unconstitutional.
3. The Court will give the law a constitutional construction if possible.

*Inhabitants of Newburyport vs. Comrs. of Essex*, 12 *Met.*, (*Mass.*) 211.
*Commonwealth vs. Anthes*, 5 *Gray*, 185 (*Mass.*)
*Opinion of Justices*, 207 *Mass.*, 601, *p.* 604.
*Holden vs. Hardy*, 169, *U. S.*, 366.
*Lochner vs. New York*, 198 *U. S.*, 45.
*Muller vs. Oregon*, 208 *U. S.*, 412.
*Bailey vs. Alabama*, 219 *U. S.*, 219.

**The said clause unreasonably and arbitrarily deprives the said plaintiff and others of liberty of person and property, especially freedom of contract, without due process of law and denies to him and them the equal protection of the laws.**

It has made it a crime to employ a woman in laboring not only for a longer time than 10 hours, but even for 5 minutes.

Under it a man is held guilty of a crime for doing what is not even forbidden in the law, except inferentially by the words "shall be deemed a violation of the provisions of this Section."

Certainly such an act violates no other provision of the Section. Can the State Legislature make an otherwise innocent act a crime by simply saying that it is one? The act forbidden by the clause was not dangerous to the health, safety, morals or welfare either of the woman or the public.

A.

The clause is arbitrary and unreasonable in that it requires the employer to post a notice in a room in which women and minors are permanently employed in laboring only six hours a day and makes it a crime if such a person is allowed to work for five minutes at any time other than as stated in the notice.

If the said clause was separated from the rest of the section, and was an independent statute would it not clearly be so arbitrary and unreasonable that the Court would not hesitate to pronounce it unconstitutional? A statute which made it a crime for a woman to work five minutes at any particular time of day irrespective of its effect upon the health or the safety of herself or the public we submit is not a reasonable exercise of the police and health powers of the State.

The said clause can only be justified on the ground that it is a reasonable health regulation to protect the health of women and thereby promote the public welfare. We submit, it does neither—there is nothing in the record to show that the work in which the woman was employed at the time stated in the complaint was or could be dangerous to the woman's health.

*People vs. Williams* (*supra*).

B.

The clause if regarded as evidential is, we submit, an unjustifiable exercise of the police power of the State, which cannot do indirectly what it cannot do directly.

*Huntington vs. Worthen*, 120 *U. S.* 97, *p.* 101.

The State Court in its decisions says (Record page 31).

> "It may be conceived that the purpose of requiring * * * * a strict observance of the posted hours of labor was to facilitate the enforcement of the law."

In our opinion that was its purpose and its sole purpose. It was to facilitate the enforcement of the law prohibiting the employment of a woman more tnan 10 hours a day or more than 56 hours a week.

The State Court (Record page 31) admits,

> "that the difficulty of enforcing a law can never justify unconstitutional methods of accomplishing a laudable purpose"

and cites Fisher vs. McGirr, 1 Gray, Mass. 1, 31, but says "reasonable regulation to this end should be upheld" and proceeds to uphold the clause as such a regulation.

Of what is the clause to be evidence?

If of a violation of the other provisions of said Section 48, it clearly does not tend in any way to prove that the woman was employed in laboring more than 10 hours in any one day or more than 56 hours in a week, or the non-posting of the notice required. This Court has held that one fact may be made *prima facie* evidence of another fact to which it is naturally or logically related.

*Lindsley vs. Natural Carbonic Co.*, 220 *U. S.* 61, *p.* 82.

We submit however, that a State has no right to make an act innocent in itself and protected by said Fourteenth Amendment conclusive evidence of another fact, properly forbidden or required, in another part of the Statute.

This Court has said in another case

"In the exercise of this power numerous statutes have been enacted providing that proof of one fact shall be *prima facie* evidence of the main fact in issue; and where the inference is not purely arbitrary and there is a rational relation between the two facts, and the accused is not deprived of a proper opportunity to submit all the facts bearing upon the issue, it has been held that such statutes do not violate the requirements of due process of law"

*Bailey vs. Alabama* 219 *U. S.* 219, *p.* 238.

The fair inference from these words is, that if they do deprive the accused of such opportunity, such statutes do violate the requirements of due process of law.

In the case of Bailey vs. Alabama the law of Alabama purported to be a rule of *prima facie* evidence. This Court held in effect that taken in connection with another rule of evidence established by the law of the same State, the rule amounted to the denial of a right to introduce the defendant's own testimony to rebut the permission of intention established by said *prima facie* rule. The Court says in effect (page 238) that the Alabama law operated to prove a crime by proof simply of a breach of contract; or in its own words

> "to expose to conviction for crime those who simply fail or refuse to perform contracts, for personal service in liquidation of a debt,"

and held that the *prima facie* rule of evidence in question was a violation of the Thirteenth Amendment of the United States Constitution and the Act of Congress passed for its enforcement.

While the point decided in the last case cited is not precisely the same as that here presented, we submit that the reasoning of the decision applies.

If it is considered merely as evidential, the clause in question in the case at bar declares a certain act not otherwise a crime to be conclusive evidence of the violation of another and preceding provision of the same section, which is a crime.

**While the Court will hold that the Statute is constitutional unless clearly otherwise, we submit it will not hesitate to declare it unconstitutional if it finds it clearly unreasonable and arbitrary.**

We contend that the only way to make the clause a reasonable health regulation was for the State Court to hold that it applied only to women who were working more than 10 hours a day, under the rule that the court will give a statute a constitutional construction if possible.

If the State Court had given this clause such a construction, it seems to us, that the Court would have departed no farther from the literal meaning of the words of the clause than it did in deciding (Record page 30) that the Statute did not apply

> " to any except women employed permanently in labor for full working days whatever the length may be";

and had the Court so held, its construction would have been accepted by this Court.

*Lindsley vs. Natural Carbonic Gas Co.*, 220 *U. S.* 61.

## RESUME.

"The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power"

"It must of course, be conceded that there is a limit to the valid exercise of the police power by the State." * * * * "Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into these contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family?"

*Lochner vs. New York, Supra.*

Said Section 48 in its entirety is not a reasonable regulation under the police power of the State, because

(1) By the approval of different schedules by the Attorney General, the law may operate unequally in different employments, and

(2) The prohibition against employing women more than 10 hours in any one day or 56 hours a week in any manufacturing or mechanical establishment is not restricted to times and places which relate to and naturally and logically affect a woman's health, safety or morals or the welfare of herself or the public.

That part of Section 48, which provides that

> "The employment of such person (woman) at a time other than as stated in said printed notice shall be deemed a violation of the provisions of this section"

is the crime of which the plaintiff was convicted, is separable from the rest of the section and is clearly unconstitutional, because,

(1) It is an arbitrary and unjustifiable restriction of the right to contract, without regard to the health of female employees whom it seeks to protect, and

(2) It was inserted in the section that its violation might be conclusive evidence of the violation of another provision to which it was not rationally related, whereby the plaintiff was deprived of a proper opportunity to submit all the facts bearing upon the issue.

Although the fine in this case is a small matter, the decision will affect the rights of thousands of employers, hundreds of thousands of employees and the use of millions of dollars worth of property.

We have annexed to this brief copies of the various Massachusetts Labor Laws referred to in the argument.

Respectfully submitted.

Edward J. Jennick
Of Counsel

ANDREW J. JENNINGS,
ISRAEL BRAYTON,
For Plaintiff in Error.

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# APPENDIX.

## MASSACHUSETTS LABOR LAWS.

### Acts of 1874, Chapter 221.

An Act to Regulate the Hours of Labor in Manufacturing Establishments.

*Be it enacted, etc., as follows:*

Section 1. No minor under the age of eighteen years, and no woman over that age, shall be employed in laboring by any person, firm or corporation in any manufacturing establishment in this Commonwealth more than ten hours in any one day, except when it is necessary to make repairs to prevent the stoppage or interruption of the ordinary running of the machinery: *Provided, however*, that a different apportionment of the hours of labor may be made for the sole purpose of giving a shorter day's work for one day of the week; but in no case shall the hours of labor exceed sixty per week.

Section 2. Any such person, firm or corporation which wilfully employs any minor or woman, or which wilfully has in its employment any minor or woman contrary to the provisions of this act, and any superintendent, overseer or other agent of any such person, firm or corporation, who wilfully employs any minor or woman in laboring for any such person, firm or corporation, * * * * contrary to the provisions of this act, shall, for each offence, be punished by a fine not exceeding fifty dollars, * * * *

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ACTS OF 1880, CHAPTER 194.

An Act to Amend "An Act to Regulate the Hours of Labor in Manufacturing Establishments."

*Be it enacted, etc., as follows:*

Section 1. Chapter two hundred and twenty-one of the acts of the year eighteen hundred and seventy-four is hereby amended by adding to the first section the following words:—"and any person, firm or corporation employing minors under the age of eighteen years, or woman in any manufacturing establishment, shall post a printed notice in a conspicuous place in every room where such help is employed, which notice shall state the number of hours work required of such persons on each day of the week; and the employment of any such persons for a longer time in any one day than the time stated in such notice shall be deemed a violation of this act, unless it shall appear that such employment on such day was in compensation for and to make up for time lost in consequence of the stopping of machinery upon which such persons were employed, or dependent upon the same for employment, on some previous day of the week of which such day formed a part."

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REVISED LAWS, CHAPTER 106.

SECTION 24. No child under eighteen years of age and no woman shall be employed in laboring in a manufacturing or mechanical establishment more than ten hours in any one day, except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of

making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-eight in a week. Every employer shall post in a conspicuous place in every room in which such persons are employed a printed notice stating the number of hours' work required of them on each day of the week, the hours of commencing and stopping work, and the hours when the time allowed for meals begins and ends or, in the case of establishments exempted from the provisions of sections thirty-six and thirty-seven, the time, if any, allowed for meals. The printed forms of such notices shall be provided by the chief of the district police, after approval by the attorney general. The employment of such person for a longer time in a day than that so stated shall be deemed a violation of the provisions of this section unless it appears that such employment was to make up time lost on a previous day of the same week in consequence of the stopping of machinery upon which he was employed or dependent for employment; but no stopping of machinery for less than thirty consecutive minutes shall justify such overtime employment, nor shall such overtime employment be authorized until a written report of the day and hour of its occurrence and its duration is sent to the chief of the district police or to an inspector of factories and public buildings.

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## Acts of 1902, Chapter 435.

### An Act Relative to the Employment of Women and Children in Manufacturing and Mechanical Establishments.

*Be it enacted, etc., as follows:*

Section 1. Section twenty-four of chapter one hundred and six of the Revised Laws is hereby amended by striking out the words "for a longer time in a day than that so stated", in the seventeenth line, and inserting in place thereof the words:—at any time other than as stated in said printed notice, so as to read as follows:

(Then follows Section 24, of the Revised Laws so amended.)

## Acts of 1909, Chapter 514, Sections 17, 48, 49.

### An Act to Codify the Laws Relating to Labor.

*Be it enacted, etc., as follows:*

Section 17. The following words and phrases as used in all laws relative to the employment of labor shall, unless a different meaning is plainly required by the context, have the following meanings:— * * *

* * * *

"Manufacturing establishments" shall mean any premises, room, or place used for the purpose of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article.

"Mechanical establishments" shall mean any premises other than a factory as above defined, in which machinery is employed in connection with any work or process carried on therein.

Section 48. No child and no woman shall be employed in laboring in a manufacturing or mechanical establishment more than ten hours in any one day, except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and, in no case, shall the hours of labor exceed fifty-eight in a week; and if any child or woman shall be employed in more than one manufacturing or mechanical establishment, the total number of hours so employed shall not exceed fifty-eight in any one week. From and after the first day of January in the year nineteen hundred and ten, no child and no woman shall be employed in laboring in a manufacturing or mechanical establishment more than ten hours in any one day except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-six in a week, except that in any such establishment where the employment is by seasons, the number of such hours in any week may exceed fifty-six, but not fifty-eight, if the total number of such hours in any year shall not exceed an average of fifty-six hours a week for the whole year, excluding Sundays and holidays. Every

employer shall post in a conspicuous place in every room in which such persons are employed a printed notice stating the number of hours' work required of them on each day of the week, the hours of commencing and stopping work, and the hours when the time allowed for meals begins and ends or, in the case of establishments exempted from the provisions of sections sixty-seven and sixty-eight of this act, the time, if any, allowed for meals. The printed forms of such notices shall be provided by the chief of the district police, after approval by the attorney-general. The employment of such person at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this section unless it appears that such employment was to make up time lost on a previous day of the same week in consequence of the stopping of machinery upon which he or she was employed or dependent for employment; but no stopping of machinery for less than thirty consecutive minutes shall justify such overtime employment, nor shall such overtime employment be authorized until a written report of the day and hour of its occurrence and its duration is sent to the chief of the district police or to an inspector of factories and public buildings.

SECTION 49. A parent or guardian who permits a minor under his control to be employed in violation of either of the two preceeding sections, and any person who, either for himself or as superintendent, overseer or agent, for another, employs any person in violation of the provisions of either of said sections, or fails to post the notice required by either of the preceding sections, or makes a false report of the stopping of machinery under the provisions of the preceding section, shall be punished by a fine of not less than fifty nor more than one hundred dollars. A certificate of the age of a minor made and sworn to by him and by his parent or guardian at the time of his employment in a mercantile, manufacturing or mechanical establishment shall be *prima facie* evidence of his age in any prosecution under the provisions of this section.

# Supreme Court of the United States

OCTOBER TERM, 1913

No. 228

RICHARD G. RILEY
PLAINTIFF IN ERROR

v.

COMMONWEALTH OF MASSACHUSETTS

In Error to the Superior Court of the State of Massachusetts

## *BRIEF OF DEFENDANT IN ERROR*

JAMES M. SWIFT
*Counsel for Defendant in Error*

(23,150)

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## BRIEF OF ARGUMENT.

I. In the exercise of the police power, the State may limit the right of contract or the use of private property within reasonable limits.

II. The mere failure to include within the operation of an act certain persons or classes to whom it might have applied will not render the legislation invalid as discriminatory. The classification of employment of women and children confined to manufacturing and mechanical establishments, such as a cotton factory, as here, is within the legislative power.

III. Whether or not the present law and the classification thereby designated, as construed by the State court, are reasonable, must be determined by facts of common knowledge, of which the court will take judicial notice.

IV. The construction and interpretation of the Massachusetts court, as applicable to the facts in this case, conclusively establish that —

1. The legislation is purely a police regulation intended "to establish the rights of children and women, who are treated as in a certain sense dependent and under an industrial disadvantage by reason of age and sex, to regular hours of employment for limited and designated periods of time, with fixed intervals for rest and refreshment, and to protect them in the enjoyment of the rights thus established, to the end that the health and endurance of the individual may be insured and the ultimate strength and virility of the race be preserved."

2. The classes of occupations designated in the act do not disclose an arbitrary discrimination.

V. When the constitutionality of the statute is settled, the means by which the aim of the statute may be forwarded within reasonable bounds are matters of legislative determination. The means provided by this statute cannot be said to be unreasonable or arbitrary, and are, therefore, within the power of the Legislature and are not obnoxious to the Constitution.

VI. It is not an impairment of the freedom of contract of a citizen to require that certain terms of a contract shall be posted in such form as not to be subject to mistake or dispute, which is in substance the entire requirement of the act. The statute requires only that the hours of labor be stipulated in advance and then be followed until some change is made. The parties are left free to establish any schedule of hours desired. The employer is only required to observe the table of hours of labor which he himself has chosen to post in any room.

23,150.

# Supreme Court of the United States.

October Term, 1913.

No. 228.

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RICHARD G. RILEY, *Plaintiff in Error,*

*v.*

COMMONWEALTH OF MASSACHUSETTS.

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IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

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## *BRIEF OF DEFENDANT IN ERROR.*

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### STATEMENT OF CASE.

The plaintiff in error, Richard G. Riley, was convicted upon a complaint against him as superintendent of the Davol Mills, a cotton manufacturing corporation doing business in the city of Fall River, Mass., for employing a woman contrary to the provisions of statute of 1909, chapter 514, sections 48 and 49, which limited the time during which minors under the age of eighteen years and women may be employed in labor in manufacturing and mechanical establishments to fifty-six hours in each week and to ten hours in each day, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week.

Among other things it is provided that " every employer shall post in a conspicuous place in every room in

which such persons are employed a printed notice stating the number of hours' work required of them on each day of the week, the hours of commencing and stopping, and the hours when the time allowed for meals begins and ends," and, further, that " the employment of such person at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this section."

The complaint on which the plaintiff in error was convicted alleged in substance that he employed a woman named Nora Calahan at five minutes to 1 o'clock (12.55 P.M.) on February 24, 1910, in a room in which there was posted a notice entitled " Time Table of the Hours of Labor Required of Minors and Women employed in this Room," and stating the hours required for the first five days in the week as ten hours and ten minutes and for Saturday five hours and ten minutes; the time of commencing work for each day 6.50 A.M.; the hour of stopping work for the first five days 6 P.M. and on Saturday 12 noon; the time allowed for dinner began at 12 M. and ended at 1 P.M.

Plaintiff in error contends that the general provisions of the statute establishing a ten-hour day for minors and women is contrary to the provisions of section 1, Article 14 of the Amendments of the Constitution of the United States, and also that if the general provisions aforesaid are constitutional, that the portion of the statute enacting the provisions with reference to the posting of said notice and the regulation of employment therewith is contrary to the provisions of said Fourteenth Amendment.

## ARGUMENT.

Plaintiff in error asks this court to set aside the conviction against him on two principal grounds: —

*A.* That sections 48 and 49 of chapter 514 of the Acts

of 1909 of the Legislature of Massachusetts are fundamentally unconstitutional in establishing a so-called ten-hour day for women and minors and a fifty-six hour week in contravention of the Fourteenth Amendment to the Constitution of the United States, in that the provisions thereof deny the equal protection of the laws; in that they interfere with the freedom of contract; in that they make an unreasonable and arbitrary classification in limiting the hours of labor in a manufacturing or mechanical establishment.

*B.* That the portion of said sections that requires the posting of a notice stating the hours of work required of the women and minors, and that permits employment only in accordance with the notice so posted, is an unreasonable and arbitrary interference with the freedom of contract, and denies the equal protection of the laws.

*A.* Defendant in error respectfully submits that plaintiff's first contention (*A*) is made too late in the economic and legal development in this country. The door was closed to such contention when this court decided

Muller *v.* Oregon, 208 U. S. 412.

As to this class of laws, by that authority it is now settled that —

I. In the exercise of the police power, the State may limit the right of contract or the use of private property within reasonable limits.

Holden *v.* Hardy, 169 U. S. 366.
Williams *v.* Arkansas, 217 U. S. 79.
Schmidinger *v.* Chicago, 226 U. S. 578.
Barrett *v.* Indiana, 229 U. S. 26.

II. The mere failure to include within the operation of an act certain persons or classes to whom it might have applied will not render the legislation invalid as discrim-

inatory. The classification of employment of women and children confined to manufacturing and mechanical establishments, such as a cotton factory, as here, is within the legislative power.

Commonwealth *v.* Hamilton Mfg. Co., 120 Mass. 383.
Griffith *v.* Connecticut, 218 U. S. 563.
Lindsley *v.* Natural Carbonic Gas Co., 220 U. S. 61.
Chicago R. I. & P. Railway *v.* Arkansas, 219 U. S. 453.
Assaria State Bank *v.* Dolley, 219 U. S. 121.
Commonwealth *v.* Riley, 210 Mass. 387.
Muller *v.* Oregon, 208 U. S. 412.

While the last-named case decided the specific point only as to a laundry, it is to be presumed that this was because the court sought only to decide the precise case before it, in which the complaint related only to a laundry. The entire reasoning in the opinion covers as well a cotton mill, and it is unthinkable that the court, which has so wisely protected the health and welfare of women employed in a laundry, will withdraw its mantle of protection when it contemplates the woman operative in a factory, compelled by force of circumstances to labor in the midst of the noise and heat and dirt and danger, and surrounded by the whirring, steam-driven machinery that such employment necessarily implies.

III. Whether or not the present law and the classifications thereby designated, as construed by the State court, are reasonable, must be determined by facts of common knowledge, of which the court will take judicial notice.

1. Brief references from some general authorities discussing the situation of women with reference to labor in

factory employment are herein set out, disclosing a widespread and common belief in regard thereto, of which the court will take judicial cognizance as matters of general knowledge.

Muller *v.* Oregon, *ubi supra*, at 421.

*British Sessional Papers.* Vol. XVI., 1875. Reports of Inspectors of Factories for the Half-year ending 30 April, 1875.

. . . The speed of machinery has already been pushed to the farthest extent, and lowered from a point which had been attempted but found unprofitable and injurious to the work. The real evil has long been, not too long hours, but too great tension of the nervous system by aiming at a larger earning, and, consequently, the charge of more machinery than is consistent with the health or good work of either.

Hence, also, an increase of irritating conflict between master and man as to the excellence of workmanship. . . . Far better sixty hours a week and less of this sad unnatural strain; for overtension may kill in fifty hours a week, and reasonable work not injure in sixty. (Page 32.)

*Effects of the Factory System.* Allen Clarke, London, 1899.

Greater speed of improved machinery, whereby the work is increased sixfold, resulting in physical deterioration and mental worry. (Page 41.)

The toil is ceaseless; the machinery demands constant watching. . . . Their feet are never still; their hands are full of tasks; their eyes are always on the watch; they toil in an unending strain that is cruel on the nerves. (Page 49.)

*Women's Work.* Amy A. Bulley and Margaret Whitley, London, Methuen, 1894.

. . . Machinery has been speeded up to a point which is immensely in excess of that which prevailed when the hours were longer. At the present time, therefore, the strain upon

the attention and the wear and tear of the nervous system are greatly in excess of former times, and the worker must be "on the stretch" the whole time to attend properly to the work. (Page 152.)

*Women Workers. Conference in Manchester,* 1907. Arranged by the National Union of Women Workers of Great Britain and Ireland in conjunction with the Committee of the Manchester Branch of N. U. W. W. London, King & Son.

Factory legislation has done much to improve general conditions and to shorten hours in the textile factories, but the intensity of labour has increased. Owing to the overdriving and the speeding up of machinery the nervous strain and pressure upon the worker is probably greater than in any other industry. (Page 28.)

*The Economic Journal.* Vol. XVIII., 1908. Gaps in our Factory Legislation. B. L. Hutchins, London.

Now, it is important to remember that these [ten] hours mean more work and more fatigue than they did when the normal day was first introduced fifty-odd years ago. The speeding up of machinery has increased the strain, and even as long ago as 1872 shorter hours were agitated for by the trade unions. . . . One of H.M.'s inspectors tells me that "both in cotton and woolen the strain of the full hours with speeding up is almost intolerable to the less robust women and girls." (Pages 223, 224.)

*Diseases of Occupation from the Legislative, Social, and Medical Points of View.* Thomas Oliver, M.A., M.D., F.R.C.P., Medical Expert on the White Lead, Dangerous Trades, Pottery, and Lucifer Match Committees of the British Home Office. New York, Dutton, 1908.

In trades that are dangerous to health the hours should not be long; and in textile industries, as the speed of machinery

is quickened and the nervous tension upon the worker becomes greater, the hours of labour should be proportionally reduced. (Page xi.)

It is an interesting problem to consider the probable effects upon the health of the work people in the future of the increased speed at which machinery is being run in the factories and the speeding-up of the work in ship yards. That there is greater strain upon the nervous system, more exhaustion and consequently need for greater leisure, few will deny, and that in many instances the hard work induces premature old age goes without saying. Will this speeding-up tend to make female mill-workers better mothers, and help them to give birth to healthy and robust children, or to infants who are puny, ill-nourished, and of a highly strung nervous system? In some American factories in which stitched muslin underwear is made, so great has been the improvement in the machinery of late that the sewing machines are carrying two to ten needles, instead of one, as formerly, and as a consequence many of the girls are no longer capable of the sustained effort necessary to follow the improved speed, and have been obliged to relinquish their occupation. The strain of the eyes in watching for broken threads in order to stop the machinery is almost intolerable; it requires an amount of nervous energy and a constancy of attention which the operators cannot supply. There is a limit beyond which the speeding of machinery cannot be run without detriment to the health of the operators, unless their hours of work are materially shortened.

Clearly, therefore, there are occupations, especially the textile trades, that tend through sheer strain to wear out the body of the worker and induce premature old age. These industries may be said to show their baneful effects upon the nervous system. (Pages 3, 4.)

Although the introduction of machinery has cheapened products and placed more of them within the reach of the poorer working classes, it has not always lightened labour. The rate

at which machinery is run demands greater attention from the work people and imposes upon them a severe strain. To the artisan classes the Saturday half-holiday and the shortened working day have proven a boon from a purely physical point of view. Great as the rush and pressure are in this country, they are even greater in America. (Page 5.)

The lightening of the burden of the textile worker by improved machinery has not altogether made mill-work easier, for by raising the speed and increasing the output a larger amount of machinery has to be tended, and this constant vigilance imposes a considerable strain upon the worker. If this is true of simple muscular movements, necessitating only mechanical supervision, how much greater must be the strain and exhaustion upon persons who in their employment are obliged to execute a series of educated and rapid muscular movements, in which volition is sustained throughout? (Page 358.)

*Report of the Inspectors of Factories for the Province of Ontario, Canada.* 1894.

With the increased speed and complications of machinery in textile industries, especially in cotton looms, the attendant has more mental worry in watching the machines, and no doubt is more exhausted physically after a day's work. (Page 13.)

*Report of the Inspectors of Factories for Ontario, Canada.* 1895.

A very small fraction of the work requires muscular strength, but it is the constant and steady application of the mind, the eager use of the eyes, which exhaust and wear out the human body. The entire nervous system is so intently directed to the detail of the work, while the machinery is running to its utmost capacity, that by night the workers are not only tired and weary, but well-nigh worn out. (Page 25.)

*Report of the Inspectors of Factories for the Province of Ontario, Canada.* 1896. Toronto, 1897.

Though there is little work which requires great muscular strength or exertion in our factories, yet the alertness and exactness of attention and constant application required exhaust the nervous vitality very rapidly. Most of the operators are necessarily on their feet nearly all the time, and this fact has an unfavorable effect upon the health of women and girls. (Page 22.)

*Canada Labour Gazette.* August, 1903. (Report of British Columbia Royal Labour Commission.) Dawson, Ottawa.

The report concludes with a recommendation as to the shortening of the hours of labour. "In these days," says the commissioners, "when the human energies are strained to their utmost amid whirling dust and machinery, long hours are a crime against nature. The machine should be the servant of man, and not man the slave of the machine. One of the most legitimate modes in which a Legislature can aid in improving the condition of the workmen is by the shortening of hours." (Page 136.)

*New South Wales.* Legislative Assembly. Report of the Working of the Factories' and Shops' Act, 1904.

Miss Duncan, inspector: —

"The effect of factory work on the individual appears to be to produce a skillful specialized worker moving within narrow limits and ill-fitted to rise above them.

"On the physical side, the want of exercise among those who sit all day at their work, the long standing of others in those processes which cannot be conveniently carried on when sitting, in either case the overexercise of certain muscles and the nonexercise of others, must bring about a very one-sided development. . . . Again, the constant vibration and noise, the unflagging at-

tention demanded by work on power machines, and the high rate of speed, must tend to operate disadvantageously on the nervous system." (Page 13.)

2. Lest it be argued that conditions in the factories of Massachusetts, such as the Davol Mills in this case, do not require such legislation for the protection of women and children working as operatives therein, extracts from various publications and public documents are herein submitted discussing matters of common knowledge in our Commonwealth, and disclosing a demand for such protection as early as the year 1844, and continuing to the time of the enactment of the provisions in question in this case.

*Massachusetts House Documents,* No. 48. 1844. Petition.

*To the Honorable the Senate and House of Representatives of the Commonwealth of Massachusetts, in General Court convened.*

We, whose names are hereto affixed, operatives in the manufactories, and other citizens of Lowell, having learned by painful experience and observation that weakness of body, lassitude of mind, neglect of many of the nobler duties of life, and a consequent disrelish for domestic, mental and moral pursuits, — together with a compensation illy proportioned already to the task of the operative, and being reduced in a fearful ratio, — are among the legitimate results of the present mode of operations in the manufacturing establishments in our midst, respectfully pray your honorable body so to modify all charters granted within the limits of your jurisdiction for protecting the rights and regulating the duties of manufacturing corporations as to forbid the running of machinery for the manufacture of yarn or cloth more than *ten hours per day.*

In view of the temptations to the abuse of authority, arising from partial monopoly of power, we earnestly petition that such

protection as your honorable body can grant may be as generously extended toward the *employed* as toward the employer, and trusting in the wisdom and benevolence of those who legislate for the *people*, we confidently ask, and shall ever continue our petition, that no charter may hereafter be given that shall allow labor to be executed, for the above-named purpose, more than ten hours per day.

MARY W. HEALY AND 411 OTHERS.

*Massachusetts House Documents*, No. 6. 1852. Petition.

*To the Honorable the Senate and House of Representatives of Massachusetts, in General Court convened.*

The undersigned, inhabitants of Boston, would respectfully represent that we believe a vast amount of evil, with no commensurate benefit, results to the community generally, and particularly to operatives in manufacturing establishments, from the devotion by the working classes of too many hours to daily labor, and that the general welfare of all classes of the people, and the permanent prosperity of all the interests, both of labor and capital, involved in manufacturing and mechanical industry, would be greatly promoted by the reduction of the time of labor to a daily term of not more than ten hours. (Page 1.)

ALVAN FLANDERS AND OTHERS.

*Massachusetts House Document.* 1865. Report of Special Committee to inquire as to the Propriety of Reducing the Hours of Labor.

This [system of ten hours] is now very generally in use, — the exceptions being in manufacturing towns and corporations, where they now require . . . women and children to work eleven hours daily, — one hour more than in England, — a disgrace in our opinion to Massachusetts and an outrage on humanity. (Pages 2, 3.)

*Massachusetts House Documents.* No. 98. 1866. Report of the Special Commission on the Hours of Labor.

Dr. Tewksbury has been a practising physician eighteen years in Lawrence, and a close observer of the health and morals of operatives. Thinks long confinement in mills and insufficient time for meals injurious, and that ten hours a day is better than eleven or twelve hours. (Page 63.)

Dr. Sargent, many years practising physician in Lawrence: Ten hours a day enough for strong men; too long for delicate women. (Page 63.)

*Massachusetts House Documents.* No. 44. 1867.

I recommend, as the result of my investigations, and in view of the expressed wish of the interest of labor in the factories, . . . the enactment of ten hours as a legal standard for a day's labor. (Page 141.)

*Report of the Massachusetts Bureau of Statistics of Labor.* 1870.

The influence of the ten-hour law in England was to raise the educational condition of the laborers, as was at once shown in their increased attendance on public lectures, public meetings, mechanics' institutes, in the establishment of agricultural and horticultural shows, where were exhibited products raised on grounds hired and worked during the time thus gained. . . . No greater boon was ever given to a people than this ten-hour law, and could a laborer of twenty years before it have come back to England, he would be amazed at the improved condition of the working people. (Pages 113, 114.)

*Report of the Massachusetts Bureau of Statistics of Labor.* 1871.

It is claimed that legislation on this subject is an interference between labor and capital. . . . But legislation has interfered with capital and labor both in the demand for public

safety and the public good. Now public safety and *public good, the wealth* of the Commonwealth, centred, as such wealth is, in the well-being of its common people, *demand that the State should interfere* by special act in favor of . . . working women and working children by enacting a ten-hour law, to be enforced by a system of efficient inspection. (Page 567.)

*Report of the Massachusetts Bureau of Statistics of Labor.* 1872.

The testimony of those who have adopted the shorter time is almost unanimous in its favor. Many reported an improved condition of the employees. No instance is given of decreased wages, though many report an increase, not only in wages but in production. All of the arguments against reduction made by those working eleven hours and over are answered by those who have adopted the shorter time, and worked under that system for years. The advocates of eleven hours have utterly failed to sustain themselves in their continued adhesion to a system that England outgrew twenty-two years ago, — a system unworthy of our State and nation, and one that would not last a month if the victims of it were men instead of women and children, as most of them are. (Page 240.)

*Massachusetts Senate Documents.* No. 33. 1874.

The committee on the labor question, to whom was referred so much of the Governor's address as relates to labor reform, having considered so much thereof as pertains to the enactment of a ten-hour law, and having also considered the petition of Wendell Phillips and others for the passage of such a law, report: —

That the advocates of a reduction of the present hours of labor in textile manufactories claim, and produce evidence to show, that ten hours is as long as females or children should be required or allowed to work in the close confinement of the mills, if the Commonwealth has any interest in insuring a healthy and intelligent posterity; that working eleven and twelve hours a day

in these factories saps the energies and produces a depression of spirits that find relief only in the indulgence of intoxicants.

They claim that the only remedy for these evils is to diminish the hours of labor. (Page 1.)

*Report of Massachusetts Bureau of Statistics of Labor.* 1881.

It is apparent that Massachusetts with ten hours produces as much per man or per loom or per spindle, equal grades being considered, as other States with eleven and more hours; and also that wages here rule as high, if not higher, than in the States where the mills run longer time. (Page 457.)

But perhaps the most emphatic testimony is that of another carpet mill employing about twelve hundred persons. This mill, which has been running but ten hours for several years, and has during this period tried the experiment of running overtime, gives the following results. The manager said, "I believe, with proper management and supervision, the same help will produce as many goods, and of superior quality, in ten hours as they will in eleven. I judge so from the fact that during certain seasons, being pushed for goods, we have run up to nine o'clock, and for the first month the production was increased materially. After this, however, the help would grow listless, and the production would fall off and the quality of the goods deteriorate." (Pages 460, 461.)

The reason is, the flesh and blood of the operatives have only so much work in them, and it was all got out in ten hours, and no more could be got out in twelve; and what was got extra in the first month was taken right out of the life of the operatives. (Page 461.)

*Report of the Chief of Massachusetts District Police.* For the year ending Dec. 31, 1883.

It has been stated by those who have specially watched the operation of the ten-hour law that "its enforcement has increased production and advanced the wages and moral standing of the masses." (Pages 17, 18.)

*Report of the Massachusetts Chief of the District Police.* 1889.

The good results of shortening the hours of labor were soon apparent in the substantial disappearance of discontent among those affected thereby; in the maintenance of the standard of factory productions, both as to quantity and quality; and in placing Massachusetts in the lead, where, by her history and her aspirations, she rightfully belonged.

. . . If experience has shown anything in this matter, it has been the wisdom and statesmanship of the body of laws in our Public Statutes and additions thereto which are known as industrial legislation. It is sixteen years since the ten-hour law was enacted; and it is entirely safe to say that, if it were stricken from the statutes to-day, not an influential voice would be raised within our borders in favor of the restoration of the order of things which that law changed. The increase of public interest in matters of this kind is a very significant fact. (Page 7.)

*Seventh Annual Convention of the International Association of Factory Inspectors of North America.* Chicago, Sept. 19–22, 1893.

Inspector Dyson of Massachusetts: —

"Let it be remembered that the gradual reduction in the hours of labor has been met by the manufacturers with improved machinery. . . .

"In a textile mill there is a very small fraction of the work that requires muscular strength. But it is the constant and steady application of the mind, the eager use of the eyes, which exhaust and wear out the human body.

"The entire nervous system is so intently directed to the detail of the work, while the machinery is running to its utmost capacity, that by night the worker is not only tired and weary, but well-nigh worn out." (Pages 118, 119.)

3. The facts disclosed by the testimony in this case clearly indicate the severe mental and physical strain under which a woman employed in the carding room or speeder room of the cotton mill of which Riley was superintendent must necessarily work. Regulation of the hours of labor for such employment cannot be called unreasonable or arbitrary as having no direct relation to the health and strength of a woman so employed.

Testimony of Mary E. Halley, a State factory inspector (Record, p. 13): —

"The women and minor end is the principal part of my work. In the performance of my duty I go around from place to place in the various mills. On February 24, 1910, I went to the Davol Mills in Fall River shortly after ten minutes of 1. I went first into the weaving room on the first floor. The complaint alleges a violation in the carding room or speeder room on the second floor, where they make spools, get the spools ready; sometimes filling is made from it and sometimes warps. The machinery there is fine and coarse speeders and slubber frames. I went up in the card room or speeder room five minutes of 1. . . . When I got up into the card room I saw the overseer come out from the office and take his watch out and look at it, and start the first speeder frame. When I saw him I also looked at my watch. The speeder frame is a long frame with a number of spindles on which large spools are placed. After the frame is started that begins the operation, and the operative has to see that the work is properly done, and if any threads break out, tie them or piece them up. When the frame is started these spools begin revolving. The machine is started by a lever. You can throw that lever on or off."

"It stops all the spools when thrown off and starts them up when put on. The operative performs the work by piecing up those ends if they should break and putting on extra spools. They call the operators there speeder tenders. When the

threads break they piece them up and replenish the spools when they become empty. Nora Callahan started her frame herself."

Testimony of Nora Callahan (Record, p. 15) : —

An speeder tender and run two frames. They have spindles on which the thread is wound. My duty is to attend to the different spools on these spindles. I have to keep watch of the threads, piece them up if they break off, and keep the machine clean, and when the spools get full take them off.

In explanation of the foregoing testimony as to the nature of the work performed by a speeder tender, it may be said that a room like that described in the complaint as a carding or speeder room is a large room filled with slubber and speeder frames. A slubber is a very coarse speeder. These frames are of considerable length, six to ten feet and more, and along the front of the frames are placed spindles varying from one hundred to two hundred in number in different mills. On these spindles are placed large spools called bobbins. On the back of the frame, and at a height of five to six feet from the floor, is another set of spools or " back bobbins," as they are called. There are twice as many back bobbins as spindles on the front. The work of this machine is to wind or twist together in the form of thread on the front bobbin a strand from each of two back bobbins, which is accomplished by revolving the front spools at a very rapid rate, anywhere between one thousand to fourteen hundred or more revolutions a minute, the back bobbins revolving at a slower speed. It is to be seen, then, that a speeder tender, such as the witness in this case, who runs two frames, must keep watch of from two to four hundred bobbins and from four to eight hundred back bobbins, the front bobbins whirling at a terrific speed. The frame is operated by throwing on a lever, when all the bobbins begin to revolve at the regu-

lated speed. It then becomes the duty of the speeder tender to watch all these whirling bobbins to see if any threads break in the process, since if the machine is not stopped as soon as such a break occurs, all the threads are likely to be snapped by the loose ends coming in contact with the other threads. The speeder tender must instantly stop the whirling bobbins by throwing off the lever, and then must properly piece together the broken ends before starting the machine again. In addition to this she must observe the spools or bobbins to see that when they become filled to their capacity each spool is removed and another spool substituted for the empty one. These back bobbins when full sometimes weigh from two to three pounds apiece. A speeder tender, therefore, suffers both from a combination of intense and continuous mental strain in watching the rapidly revolving bobbins for breaking threads, and from continued physical exertion in reaching up to remove the back bobbins when empty and lifting from the supply box to the frame the full back bobbins. In addition to this she is expected to keep the machine clean. (Record, p. 15.)

It may be asserted that the work of the speeder tender is the hardest woman's employment in the mill when the work is properly done.

IV. The construction and interpretation of the Massachusetts court, as applicable to the facts in this case, conclusively establish that —

1. The legislation is purely a police regulation intended "to establish the rights of children and women, who are treated as in a certain sense dependent and under an industrial disadvantage by reason of age and sex, to regular hours of employment for limited and designated periods of time, with fixed intervals for rest and refreshment, and to protect them in the enjoyment of the rights thus established, to the end that the health and endurance of the

individual may be insured and the ultimate strength and virility of the race be preserved."

2. The classes of occupations designated in the act do not disclose an arbitrary discrimination.

Said sections 48 and 49 of chapter 514 of the Acts of 1909 are as follows (Record, pp. 18, 19): —

"SECTION 48. No child and no woman shall be employed in laboring in a manufacturing or mechanical establishment more than ten hours in any one day, except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and, in no case, shall the hours of labor exceed fifty-eight in a week; and if any child or woman shall be employed in more than one manufacturing or mechanical establishment, the total number of hours so employed shall not exceed fifty-eight in any one week. From and after the first day of January in the year nineteen hundred and ten, no child and no woman shall be employed in laboring in a manufacturing or mechanical establishment more than ten hours in any one day, except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-six in a week, except that in any such establishment where the employment is by seasons, the number of such hours in any week may exceed fifty-six, but not fifty-eight, if the total number of such hours in any year shall not exceed an average of fifty-six hours a week for the whole year, excluding Sundays and holidays. Every employer shall post in a conspicuous place in every room in which such persons are employed a printed notice stating the number of hours' work required of them on each day of the week, the hours of commencing and stopping work, and the hours when the time allowed for meals begins and ends or, in the case of establishments exempted from the provisions of sections sixty-

seven and sixty-eight of this act, the time, if any allowed for meals. The printed forms of such notices shall be provided by the chief of the district police, after approval by the attorney-gemeral. The employment of such person at any time other than as stated in said printed notice shall be deemed a violation off the provisions of this section unless it appears that such employment was to make up time lost on a previous day of the same week in consequence of the stopping of machinery upon which he or she was employed or dependent for employment; but no stopping of machinery for less than thirty consecutiwe minutes shall justify such overtime employment, nor shall such overtime employment be authorized until a written report of the day and hour of its occurrence and its duration is sentt to the chief of the district police or to an inspector of factoriies and public buildings."

"SECTION 49. A parent or guardian who permits a minor under his control to be employed in violation of either of the two preceding sections, and any person who, either for himself or as superintendent, overseer or agent for another, employs any person in violation of the provisions of either of said sections, or fails to post the notice required by either of the preceding sections, or makes a false report of the stopping of machinery under the provisions of the preceding section, shall be punished by a fine of not less than fifty nor more than one hundred dollars."

These provisions were interpreted by the Massachusetts court in its decision in this case as follows (Record, pp. 29, 30): —

"The meaning of this language must be determined. It ought to be read in the light of the general purpose of the Legislature in enacting it. That purpose was to establish the rights of children and women, who are treated as in a certain sense dependent and under an industrial disadvantage by reason of age and sex, to regular hours of employment for limited and

designated periods of time, with fixed intervals for rest and refreshment, and to protect them in the enjoyment of the rights thus established, to the end that the health and endurance of the individual may be insured and the ultimate strength and virility of the race be preserved. The requirement for the posting of notices where 'such persons' are employed means wherever women and children are regularly employed for any substantial number of hours daily. It applies to every employer of 'such persons.' Both phrases are wholly general and without restriction or exception. It is not fairly open to the construction that it applies only to establishments where 'such persons' are regularly employed more than ten hours in any one day, and that it does not affect those when on no day is there employment for more than ten hours. All those who in manufacturing and mechanical establishments employ women and children in practically permanent labor are required to post the notices which fix definitely the hours of work. As was pointed out in Commonwealth *v.* Osborn Mill, 130 Mass. 33, statutes of that character are not intended, either by letter or in spirit, to apply to any except women employed permanently, who labor for full working days, whatever the length may be. The statute does not apply to those who are hired temporarily or intermittently to perform tasks subsidiary to the main business of the factory or shop. A woman engaged for an hour or two a day sweeping the floors or washing windows, although perhaps technically in some aspects a laborer, would not come within the purview of the statute, having regard to the ends to be subserved by it and the general grounds on which its constitutionality is sustained. But the requirement of the statute is that as to those regularly employed for the full shop day there must be a posting of the notices, with the definite statement of the hour of starting, the limits of time for the intermission, and the hour of closing. These hours may be fixed by agreement of parties with absolute freedom within the maximum permitted, save in a particular not here material."

" Employment of women and children outside the hours thus agreed upon is prohibited, and infraction of this prohibition is punishable as a crime."

**The construction and interpretation given by the highest court of Massachusetts to the provisions of law in question are conclusive upon this court.**

Hamilton Co. *v.* Massachusetts, 6 Wall. 632.

" The rule is well settled in this court that the construction of the Constitution or statute of a State by the highest judicial tribunal of such State, in a case not involving any question under the twenty-fifth section of the Judiciary Act, is to be regarded as a part of the provision, and that it is as binding upon the courts of the United States as the text."

Osborne *v.* Florida, 164 U. S. 650, 654.

In that case appears the following language: —

" The particular construction to be given to this State statute is a question for the State court to deal with, and in such a case as this we follow the construction given by the State court to the statutes of its own State."

Stockard *v.* Morgan, 185 U. S. 27, 30.

In that case this court said: —

" In this case we are bound to give the same meaning to the State statute that was given to it by the Supreme Court of the State, and the question which remains for us to decide is, whether as so construed the statute violates any provision of the federal Constitution."

See also Howard *v.* Kentucky, 200 U. S. 164 at 173.
Twining *v.* New Jersey, 211 U. S. 90.

**The judicial act of the highest court of the State in authoritatively construing and enforcing its laws is the act of the State.**

So construed, said sections are clearly proper and reasonable police regulations, having a direct relation to the health of the classes of laborers (women) sought to be protected and to the welfare of the community. The classifications so designated in the act do not disclose an arbitrary discrimination.

*B.* As to the second principal contention of the plaintiff in error (*B*), the defendant in error claims: —

V. When the constitutionality of the statute is settled, the means by which the aim of the statute may be forwarded within reasonable bounds are matters of legislative determination. The means provided by this statute cannot be said to be unreasonable or arbitrary, and are therefore within the power of the Legislature and are not obnoxious to the Constitution.

The means provided by this statute for carrying out its purposes are the posting of the notices setting forth the hours of labor required and the prohibition against employment for longer or different times than as specified in said notice. This is a necessary detail in the administration of the law.

These provisions were construed by the State court in its decision as follows (Record, p. 29): —

"The requirement for the posting of notices where 'such persons' are employed means wherever women and children are regularly employed for any substantial number of hours daily. It applies to every employer of 'such persons.' Both phrases are wholly general and without restriction or exception. It is not fairly open to the construction that it applies only to establishments where 'such persons' are regularly employed more than ten hours in any one day, and that it does not affect those when on no day is there employment for more than ten hours. All those who, in manufacturing and mechanical establishments, employ women and children in practically

permanent labor, are required to post the notices which fix definitely the hours of work."

The precise offence of which the plaintiff in error was convicted was for violation of these provisions concerning the notice for the hours of labor in the speeder room, as appears by the complaint. (Record, p. 5.)

"COPY OF COMPLAINT.

Mary E. Halley . . . on oath complains that Richard G. Riley of Fall River, in the County of Bristol, at Fall River, aforesaid, . . . on the 24 day of February in the year of our Lord nineteen hundred and ten, being then and there the superintendent of the Davol Mills a corporation duly established according to law and carrying on in said Fall River a manufacturing establishment to wit a mill for the manufacture of cotton goods in which establishment women were then and there employed in laboring and in which manufacturing establishment the said corporation had caused to be posted before the said 24 day of February and on said 24 day of February still had and continued to have posted in a conspicuous place in said establishment in a certain room therein in which said room were employed certain women to wit Annie Manning and Nora Callahan a printed notice that said women were required to work in laboring during the hours set forth in said notice, which said notice was of the following tenor, to wit:

*Time Table of the Hours of Labor Required of Minors and Women Employed in this Room.*

| | Hours. | Commence work at | Stop work at | TIME ALLOWED FOR DINNER. | |
|---|---|---|---|---|---|
| | | | | Hour begins. | Hour ends. |
| Monday, | 10.10 | 6.50 | 6.00 | 12 | 1 |
| Tuesday, | " | " | " | " | " |
| Wednesday, | " | " | " | " | " |
| Thursday, | " | " | " | " | " |
| Friday, | " | " | " | " | " |
| Saturday, | 5.10 | " | 12 | " | " |

did then and there employ in laboring in said mill and in the room in which said notice was posted the said women Annie Manning and Nora Callahan at a time other than that stated in said printed notice, to wit, at five minutes of one o'clock 12.55 M. on said 24 day of February the said employment of the said Annie Manning and Nora Callahan at the time aforesaid not being then and there or any part thereof in compensation for or to make up for any time lost in consequence of the stopping of any machinery of said corporation upon which said Annie Manning or Nora Callahan was employed or dependent for employment."

1. The particular provision under which this complaint was drawn constitutes an offence in itself. It is not merely evidence of a violation of other provisions of the act, as contended by plaintiff in error. This was declared by the Supreme Judicial Court of Massachusetts in its opinion in this case (Record, p. 30): —

"Employment of women and children outside the hours thus agreed upon is prohibited, and infraction of this prohibition is punishable as a crime."

(Record, p. 29): —

"It is not fairly open to the construction that it applies only to establishments where 'such persons' are regularly employed more than ten hours in any one day, and that it does not affect those when on no day is there employment for more than ten hours. All those who, in manufacturing and mechanical establishments, employ women and children in practically permanent labor, are required to post the notices which fix definitely the hours of work."

It was intended by these provisions to establish the rights of women and children "to regular hours of employment for limited and designated periods of time, with

fixed intervals for rest and refreshment, and to protect them in the enjoyment of the rights thus established." (Record, p. 29.)

It cannot be said that this regulation, for such a purpose, has no reasonable relation to the preservation of the health and strength of the woman operative. Indeed, regularity of working hours and regular times for meals is, as a matter of common knowledge, one of the principal prescriptions given by physicians to persons who are run down from overwork or by irregular employment.

2. The term "manufacturing establishment," as defined in section 17 of the act, is as stated in plaintiff's brief, as follows: —

> "'Manufacturing establishments' shall mean any premises, room or place used for the purpose of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article."

This language, however, was construed by the Massachusetts court (Record, p. 30) to —

> "include those places popularly known as mills and shops, where, as matter of common knowledge, continuously operating machinery and constant service by attendants throughout the whole day are not essential to economical manufacture, and where ordinarily machinery is stopped for the noon hour. The statute does not extend in that respect to stores or to branches of manufacture or industry where continuity of labor by somebody is necessary from the beginning to the end of the work day. Other provisions are made for these classes of employment."

As so construed, this court will have no difficulty in affirming the view of the Supreme Judicial Court of Massachusetts that "a classification of employment of women and children confined to manufacturing and mechanical

establishments of this character is within the legislative power." (Record, p. 30.)

VI. It is not an impairment of the freedom of contract of a citizen to require that certain terms of a contract shall be posted in such form as not to be subject to mistake or dispute, which is in substance the entire requirement of the act, so far as material in this case. The statute requires only that the hours of labor be stipulated in advance and then be followed until some change is made. The parties are left free to establish any schedule of hours desired. The employer is only required to observe the table of hours of labor which he himself has chosen to post in any room.

He is protected from the unauthorized act of the employee, who might through malice or mistake perform labor outside of the time permitted in the posted notice, by section 70 of said act (Record, p. 31), which provides: —

SECTION 70. If a minor or a woman shall, without the orders, consent or knowledge of the employer or of the superintendent, overseer or other agent of the employer, labor in a manufacturing or mechanical establishment, factory or workshop during a part of any time allowed for meals in such establishment, factory or workshop, according to the notice required by section forty-eight, and if a copy of such notice was posted in a conspicuous place in the room where such labor was performed with a rule of the establishment, factory or workshop forbidding such minor or woman to labor during such time, then neither the employer nor a superintendent, overseer or other agent of the employer shall be held responsible for such labor.

## Conclusion.

The action of the Legislature of Massachusetts in forbidding labor by women for more than ten hours a day or fifty-six hours a week in manufacturing establishments, as defined by the Supreme Judicial Court of Massachusetts, and as applicable to the facts in this case, was not arbitrary or unreasonable. The legislation in question has a due and rational relation to the health and welfare of the employee in this industry, and of the community. The classification provided in the statute is based on real and substantial differences, and is not arbitrary discrimination.

It is respectfully submitted that the judgment of the Supreme Judicial Court of Massachusetts in holding the act constitutional as a valid exercise of the police power, and in sustaining the conviction against plaintiff in error Riley, should be affirmed.

THOMAS J. BOYNTON,
*Attorney-General of Massachusetts.*

*By*

JAMES M. SWIFT,
*Special Counsel.*

# RILEY *v.* COMMONWEALTH OF MASSACHUSETTS.

ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

No. 228. Argued March 4, 5, 1914.—Decided March 23, 1914.

A state statute limiting the hours of labor in factories for women, if otherwise valid, is not unconstitutional as depriving the employer or employé of property without due process of law by limiting the right to buy and sell labor and infringing the liberty of contract in that respect. *Muller* v. *Oregon*, 208 U. S. 412.

It being competent for the State to restrict the hours of employment of a class of laborers, it is also competent for the State to provide administrative means against evasion of such restrictions. *C., B. & Q. Ry.* v. *McGuire*, 219 U. S. 549.

The wisdom and legality of the means adopted by the legislature to enforce proper restrictions on employment of labor cannot be judged by extreme instances of their operation.

Section 48 of the Labor Act of 1909 of Massachusetts, regulating the hours of labor of women in factories, is not an unconstitutional denial of due process of law because it provides for the posting of a schedule of hours and requires the hours to be stipulated in advance and followed until a change is made. The provision is reasonable and not arbitrary.

A provision in a state statute that the form of notice in which employes' hours of labor are scheduled shall be approved by the Attorney General of the State, does not deny equal protection of the law if the approval is confined to the form of notice and not to the schedules which might provide for different hours in different cases.

In this case the conviction by the state court, of one in whose factory in Massachusetts women were permitted to work during the period scheduled as dinner hour, under § 48 of the Labor Act of 1909 of Massachusetts, sustained; and *held* that such statute is not unconstitutional under either the due process or equal protection provision of the Fourteenth Amendment.

210 Massachusetts, 387, affirmed.

THE facts, which involve the constitutionality, under the due process and equal protection of the law provisions of the Fourteenth Amendment, of the Woman's Labor Act of Massachusetts, are stated in the opinion.

*Mr. Andrew J. Jennings*, with whom *Mr. Israel Brayton* and *Mr. Edward T. Fenwick* were on the brief, for plaintiff in error:

Section 48 is in violation of the Fourteenth Amendment as it goes beyond the power of the State to restrict the employment of labor. *Holden* v. *Hardy*, 169 U. S. 366; *Lochner* v. *New York*, 198 U. S. 45; *Allgeyer* v. *Louisiana*, 165 U. S. 579, p. 589; *Muller* v. *Oregon*, 208 U. S. 412.

Section 48 denies the equal protection of the laws.

The state legislature virtually admits in the statute itself that it does not deem it necessary for a woman's health to limit her employment in laboring to ten hours a day, and it gives to every different employer the right by posting a printed notice, to employ a woman in laboring eleven hours a day on five days in the week provided he employs the woman such a number of hours on the sixth day as not to exceed fifty-six hours in the whole week.

Even if such a notice must first be approved by the Attorney General of the State, the statute only says the form shall be approved; but if it is held that the Attorney General is to approve the number of hours and that the Attorney General may say what the number of hours shall be, then he could approve or disapprove different notices stat-

ing different numbers of hours of employment by different employers. See *Yick Wo* v. *Hopkins*, 118 U. S. 356, p. 369.

The law is to be judged not by what may be done but by what can be done, under it. *Curtin* v. *Benson*, 222 U. S. 78.

The state statute is not only a denial of the equal protection of the laws, but it is unreasonable and arbitrary in forbidding the employment of women more than ten hours in any one day or fifty-six hours a week in any mechanical and manufacturing establishment. See *Muller* v. *Oregon*, *supra*.

Section 17 of Chap. 541, defining a manufacturing establishment as any premises, room or place used for the purpose of making, altering, repairing, ornamenting or finishing or adapting for sale any article or part of an article, includes any room or place regardless of the kind of work or the sanitary conditions under which the work is performed.

This court must hold unconstitutional a law which forbids such employments as these last mentioned, unless it is prepared to hold that the State under its police powers has the right to forbid the employment of women in doing any sort of labor for more than ten hours a day. *People* v. *Williams*, 116 N. Y. App. Div. 379.

Even if the statute be held constitutional as to the employment of women more than ten hours in a day or fifty-six hours in a week, that is not the crime of which the plaintiff was charged and convicted.

Under § 48, as now amended, the employment of a woman at a time other than as stated in the printed notice, is a violation of the act. This is clearly unconstitutional and may be so declared without affecting the two prohibitions of the statute forbidding the employment of women more than ten hours a day and more than fifty-six hours a week. *Edwards* v. *Bruorton*, 184 Massachusetts, 529; *Hunt-*

*ington* v. *Worthen*, 120 U. S. 97, p. 101; *Field* v. *Clark*, 143 U. S. 649, p. 696.

An employer is no longer to be punished only in case he endangers a woman's health by employing her in laboring in any one day more than ten hours or for a longer time than as stated in the notice, or more than fifty-six hours in a week, but he is now to be adjudged a criminal and punished if he employs her for one minute other than as stated in the notice.

In construing such a law it will not be sustained unless it is reasonable and not arbitrary.

If the court cannot construe the law as a reasonable and proper exercise of the police power of the State, it must declare it unconstitutional.

The court will give the law a constitutional construction if possible. *Newburyport* v. *Comrs. of Essex*, 12 Met. (Mass.) 211; *Commonwealth* v. *Anthes*, 5 Gray, 185 (Mass.); *Opinion of Justices*, 207 Massachusetts, 601, p. 604; *Holden* v. *Hardy*, 169 U. S. 366; *Lochner* v. *New York*, 198 U. S. 45; *Muller* v. *Oregon*, 208 U. S. 412; *Bailey* v. *Alabama*, 219 U. S. 219.

The said clause unreasonably and arbitrarily deprives the said plaintiff and others of liberty of person and property, especially freedom of contract, without due process of law and denies to him and them the equal protection of the laws.

It has made it a crime to employ a woman in laboring not only for a longer time than ten hours, but even for five minutes.

Under it a man is held guilty of a crime for doing what is not even forbidden in the law, except inferentially by the words "shall be deemed a violation of the provisions of this Section."

Certainly such an act violates no other provision of the section. Can the state legislature make an otherwise innocent act a crime by simply saying that it is one? The

act forbidden by the clause was not dangerous to the health, safety, morals or welfare either of the woman or the public.

The clause is arbitrary and unreasonable in that it requires the employer to post a notice in a room in which women and minors are permanently employed in laboring only six hours a day and makes it a crime if such a person is allowed to work for five minutes at any time other than as stated in the notice.

Such a clause can only be justified on the ground that it is a reasonable health regulation to protect the health of women and thereby promote the public welfare. It does neither. *People* v. *Williams*, 116 N. Y. App. Div. 379.

The clause if regarded as evidential, is an unjustifiable exercise of the police power of the State, which cannot do indirectly what it cannot do directly. *Huntington* v. *Worthern*, 120 U. S. 97, p. 101.

A State has no right to make an act innocent in itself and protected by the Fourteenth Amendment conclusive evidence of another fact, properly forbidden or required, in another part of the statute. *Bailey* v. *Alabama*, 219 U. S. 238.

While the court will hold that the statute is constitutional unless clearly otherwise, we submit it will not hesitate to declare it unconstitutional if it finds it clearly unreasonable and arbitrary. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61.

The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power. *Lochner* v. *New York*, *supra*.

Section 48 in its entirety is not a reasonable regulation under the police power of the State, because:

By the approval of different schedules by the Attorney General the law may operate unequally in different employments, and

The prohibition against employing women more than ten hours in any one day or fifty-six hours a week in any manufacturing or mechanical establishment is not restricted to times and places which relate to and naturally and logically affect a woman's health, safety or morals or the welfare of herself or the public.

That part of section 48 of the act which provides that the employment of a woman at a time other than as stated in said printed notice shall be deemed a violation of the provisions of this section, is the crime of which the plaintiff was convicted, is separable from the rest of the section and is clearly unconstitutional.

*Mr. James M. Swift*, with whom *Mr. Thomas J. Boynton*, Attorney General of the Commonwealth of Massachusetts, was on the brief, for defendant in error:

In the exercise of the police power, the State may limit the right of contract or the use of private property within reasonable limits.

The mere failure to include within the operation of an act certain persons or classes to whom it might have applied will not render the legislation invalid as discriminatory. The classification of employment of women and children confined to manufacturing and mechanical establishments, such as a cotton factory, as here, is within the legislative power.

Whether or not the present law and the classification thereby designated, as construed by the state court, are reasonable, must be determined by facts of common knowledge, of which the court will take judicial notice.

The construction and interpretation of the Massachusetts court, as applicable to the facts in this case, conclusively establish that—

The legislation is purely a police regulation intended to establish the rights of children and women, who are treated as in a certain sense dependent and under an industrial disadvantage by reason of age and sex, to regular hours of employment for limited and designated periods of time, with fixed intervals for rest and refreshment, and to protect them in the enjoyment of the rights thus established, to the end that the health and endurance of the individual may be insured and the ultimate strength and virility of the race be preserved.

The classes of occupations designated in the act do not disclose an arbitrary discrimination.

When the constitutionality of the statute is settled, the means by which the aim of the statute may be forwarded within reasonable bounds are matters of legislative determination. The means provided by this statute cannot be said to be unreasonable or arbitrary, and are, therefore, within the power of the legislature and are not obnoxious to the Constitution.

It is not an impairment of the freedom of contract of a citizen to require that certain terms of a contract shall be posted in such form as not to be subject to mistake or dispute, which is in substance the entire requirement of the act. The statute requires only that the hours of labor be stipulated in advance and then be followed until some change is made. The parties are left free to establish any schedule of hours desired. The employer is only required to observe the table of hours of labor which he himself has chosen to post in any room.

In support of these contentions see, *Assaria State Bank* v. *Dolley*, 219 U. S. 121; *Barrett* v. *Indiana*, 229 U. S. 26; *Commonwealth* v. *Hamilton Mfg. Co.*, 120 Massachusetts, 383; *Chicago, R. I. & P. Ry.* v. *Arkansas*, 219 U. S. 453; *Commonwealth* v. *Riley*, 210 Massachusetts, 387; *Griffith* v. *Connecticut*, 218 U. S. 563; *Hamilton Co.* v. *Massachusetts*, 6 Wall. 632; *Holden* v. *Hardy*, 169 U. S. 366; *Howard* v.

*Kentucky*, 200 U. S. 164; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61; *Muller* v. *Oregon*, 208 U. S. 412; *Osborne* v. *Florida*, 164 U. S. 650; *Stockard* v. *Morgan*, 185 U. S. 27; *Schmidinger* v. *Chicago*, 226 U. S. 578; *Twining* v. *New Jersey*, 211 U. S. 90; *Williams* v. *Arkansas*, 217 U. S. 79.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Criminal complaint brought against plaintiff in error in the Superior Court within and for the county of Bristol charging him with the violation of a statute of the State [1] in that he, being superintendent of the Davol Mills, a corporation duly established by law and conducting a mill for the manufacture of cotton goods in which establishment women were employed, employed two women by the names of Annie Manning and Nora Callahan at a time other than the time which the statute required to be posted in a conspicuous place in the mill where women were required to work in laboring. The specific charge is that the women were employed at five minutes of one o'clock (12.55 p. m.) on the twenty-fourth of February, 1910, in a room wherein was posted a notice in which it was stated that the time of commencing work was 6:50 a. m. and of stopping work was 6 p. m., and that the time allowed for dinner began at 12 m. and ended at 1 p. m.

A demurrer and motion to quash were filed, alleging the unconstitutionality of the statute.

The charge was dismissed as to Annie Manning, and plaintiff in error was convicted as to the charge in regard to Nora Callahan, a d sentenced to pay a fine of $50.00. The sentence was affirmed by the Supreme Judicial Court, and its rescript having been sent to the trial court, this writ of error was sued out.

[1] Chapter 514, Acts of 1909 entitled "An Act to Codify the laws relating to labor."

The statute of the State which is assailed provides that no child or woman shall be employed in laboring in any manufacturing or mechanical establishment more than ten hours in any one day, except as hereinafter provided in this section, unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week, and in no case shall the hours of labor exceed fifty-six in a week. It is provided, "Every employer shall post in a conspicuous place in every room in which such persons are employed a printed notice stating the number of hours' work required of them on each day of the week, the hours of commencing and stopping work, and the hours when the time allowed for meals begins and ends. . . . The employment of such person at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this section," punishable by a fine of not less than $50 nor more than $100.

The first contention of plaintiff in error is that the statute restricts the right to sell and buy labor, and therein infringes the liberty of contract assured by Art. XIV of the amendments to the Constitution of the United States. The contention is untenable expressed in this generality. In *Muller* v. *Oregon*, 208 U. S. 412, against a similar contention, a statute of Oregon was sustained which prohibited the employment of women in mechanical factories or laundries working more than ten hours during any one day, with power, as in the Massachusetts statute, to apportion the hours through the day.

But special objections are made which, it is contended, make *Muller* v. *Oregon* inapplicable. The prohibition of the statute under review, it is said, "is not restricted to times and places which relate to and naturally and logically affect a woman's health, safety or morals or the welfare of herself or the public." Such are the conditions necessary to the validity of a statute, restricting employ-

ment, it is contended, and that those conditions are not satisfied by the statute. Section 48, it is urged, not only prohibits the employment of women more than ten hours a day, but that (quoting the section) "the employment of such person [woman] at a time other than as stated in said printed notice shall be deemed a violation of the provisions of this section."

The provision is arbitrary and unreasonable, it is insisted, in that it requires the employer to post a notice in a room in which women and minors are permanently employed in laboring only six hours a day and makes it a crime if such person is allowed to work for five minutes at a time other than as stated in the notice. But if we might imagine that an employer would so enlarge the restrictions of the statute or be charged with violating it if he did, we yet must remember that as it was competent for the State to restrict the hours of employment it is also competent for the State to provide administrative means against evasion of the restriction. *Chicago, B. & Q. R. R. Co.* v. *McGuire*, 219 U. S. 549; *St. John* v. *New York*, 201 U. S. 633. Neither the wisdom nor the legality of such means can be judged by extreme instances of their operation. The provision of § 48 cannot be pronounced arbitrary. As said by the Supreme Judicial Court, the statute "requires the hours of labor to be stipulated in advance, and then to be followed until a change is made. It does not by its terms establish a schedule of hours. This is left to the free action of the parties. Nor does it in the sections now under consideration restrict the right to labor to any particular hours. See *People* v. *Williams*, 189 N. Y. 131. It simply makes imperative strict observance of any one table of hours of labor while it remains posted.

"The end of the statute is the protection of women within constitutional limits, and the requirement that the hours posted in the notice shall be followed is a means to

effectuate the attainment of that end (p. 394)." In other words, the purpose of the posting of the hours of labor is to secure certainty in the observance of the law and to prevent the defeat or circumvention of its purpose by artful practices.

There is a contention somewhat tentatively made by plaintiff in error that the statute offends the equal protection clause of the Fourteenth Amendment. It will be observed that § 48 provides that the printed form of the "notice shall be provided by the chief of the district police, after approval by the attorney general." And counsel say, "If it be claimed that such a notice must first be approved by the Attorney General of the State, our reply is that the statute says the *form* shall be approved; but if it is held that the Attorney General is to approve the number of hours and that the Attorney General may say what the number of hours shall be, then he could approve or disapprove different notices stating different numbers of hours of employment by different employers. This seems to us to be a violation of the Fourteenth Amendment as denying equal protection of the laws."

And again counsel say, as a specification of the unreasonableness of the statute as an exercise of the police power of the State, "By approval of different schedules by the Attorney General, the law may operate unequally in different employments." This supposition is based on the other, that is, that something else than the form of notice is to be prescribed by the Attorney General. But counsel assert that it is the form only which the Attorney General is to approve, and the assertion is not denied. There is, therefore, nothing tangible in the contention. Besides, it has no justification in the opinion of the Supreme Judicial Court.

*Judgment affirmed.*